

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

686

No. 20,219

WILFRED HANDLER,
Appellant,

v.

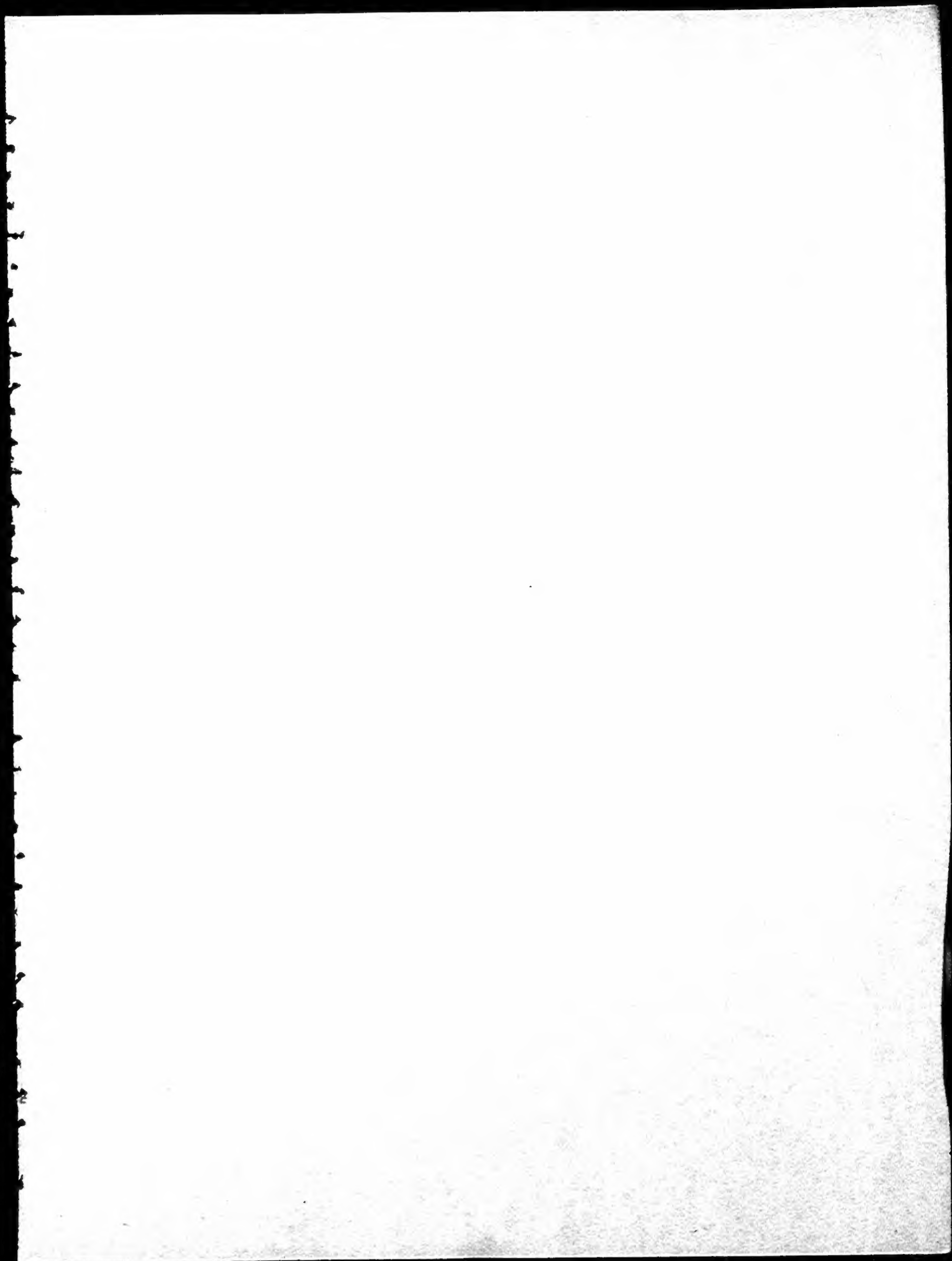
SECRETARY OF LABOR, et al.,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals
for the District of Columbia Circuit

FILED OCT 13 1966

Nathan J. Paulson
CLERK



(i)

CONTENTS AND TOPICAL INDEX

<u>Date Filed</u>	<u>Contents</u>	<u>Page</u>
	Docket Entries	1
2-5-64	Complaint	5
4-6-64	Answer	20
3-24-65	Plaintiff's Interrogatories	23
4-8-65	Defendants' Motion For Protective Order And Opposition To Interrogatories.	24
4-16-65	Plaintiff's Opposition To Defendants' Mo- tion For Protective Order	26
4-16-65	Excerpt From Plaintiff's Memorandum Of Points And Authorities In Support Of Opposi- tion To Defendants' Motion For Protective Order	26
5-6-65	Defendants' Motion For Summary Judgment	27
5-6-65	Excerpts From Government Exhibit A	28
	Transcript Of Court Proceedings May 10, 1965; Hearing on Defendants' Motion For Protective Order	123
5-11-65	Order Granting Defendants' Motion For Protec- tive Order.	130
5-26-65	Defendants' Supplement To Motion For Summary Judgment	130
5-26-65	Excerpts From Government Exhibit C	131
11-15-65	Plaintiff's Opposition To Defendants' Motion For Summary Judgment.	139
11-15-65	* Plaintiff's Exhibits, No's. 2-10; 12-16	140
	* * Excerpts From Government Exhibit B	174

* All documents labeled "Plaintiff's Exhibit" were filed first as enclosures to Government Exhibit A on May 6, 1965. But since the component parts of Government Exhibit A were not readily distinguishable, plaintiff, for the District Court's convenience, re-filed as his own exhibits certain enclosures of Government Exhibit A.

* * Government Exhibit B was submitted to the Judge at the December 15, 1965, hearing of defendants' motion for summary judgment. It was filed by defendants with the Clerk of the Court on January 10, 1966.

(ii)

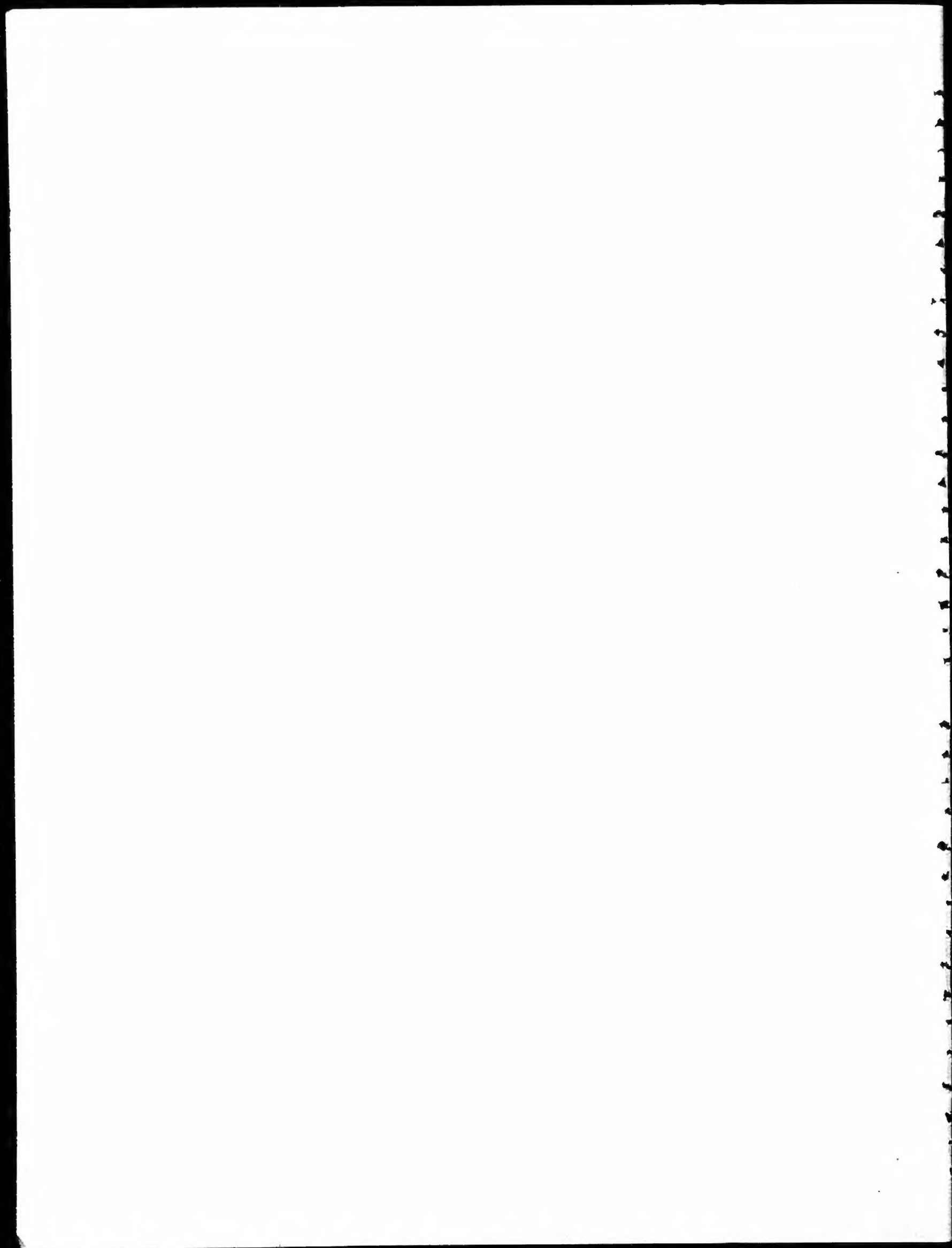
	<u>Page</u>
Excerpts From Transcript Of Court Proceedings December 15, 1965; Hearing On Defendants' Motion For Summary Judgment	221
1-5-66 Plaintiff's Motion For A Memorandum Opinion	227
1-5-66 Order Granting Defendants' Motion For Summary Judgment	229
1-17-66 Plaintiff's Motion That The Court Make Additional Findings And Vacate Judgment	230
1-20-66 Order Denying Plaintiff's Motion Of January 17, 1966.	232
1-27-66 Plaintiff's Motion That The Court's Order Of January 20, 1966, Be Stayed And Vacated	233
2-8-66 Order Denying Plaintiff's Motion Of January 22, 1966	235
3-7-66 Notice Of Appeal	236

TOPICAL INDEX

Complaint — Jurisdiction and Facts, Paragraphs 1-29	5-12
Illegalities Alleged, Paragraphs 30-45	12-19
Appellant's Grievance—decision "by Secretary of Labor"	142
Same as above — Photo of "Secretary's Signature".	145
Transfer to Detroit — Memo dated April 23, 1962, Notifying Appellant	32
Removal of Appellant Proposed — Letter dated May 14, 1962, Notifying Appellant	151
Removal Proposal Questioned by Appellant — Memo dated May 22, 1962	153
Cancellation of Removal Proposal, New Proposal To Separate— Letter dated June 6, 1962	157
Supplement to Separation Proposal — Memo to Appellant dated June 7, 1962	160
Removal Notice — Letter to Appellant dated Aug. 1, 1962	41
Standard Form 50, Notification of Personnel Action, dated 8-1-62 — Photo	43

(iii)

	<u>Page</u>
Appeal to the Civil Service Commission by Appellant, Aug. 11, 1962	44
Secretary of Labor's Identification of Signer of "OK A.J.G." on Appellant's Secretarial Grievance-decision — Memo dated Sept. 12, 1962, to David S. North from Arthur J. Goldberg; Text and Photo.	63, 64
Introduction Into the Administrative Record of the Secretary's Memo Indexed Immediately Above — Letter dated Sept. 18, 1962, from Labor's Director of Personnel to Civil Service Commission.	62
Re the Secretary of Labor's Memo Indexed Two Items Above:	
(a) Appellant's Unsuccessful Attempts To Get the Original Document;	
(b) Appellant's Unsuccessful Attempts To Learn If Ad- dressee, David S. North, Had Received the Original	68-85
Civil Service Commission Decision (Appeals Examining Office) Dec. 11, 1962.	86-105
Appellant's Appeal to Board of Appeals and Review (Civil Service Commission) December 19, 1962	106
Civil Service Commission Decision (Board of Appeals and Review) June 4, 1963	114



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Wilfred Handler
3218 Shelburne Road
Baltimore, Maryland
Mailing Address:
P. O. Box 1052
Baltimore, Maryland, 21203
Plaintiff

v.

Secretary of Labor,
Washington, D. C.
Chairman of the Civil Service
Commission, Washington, D.C.
Each of the two members of the
Civil Service Commission,
Washington, D. C.

Civil Action
No. 304-64.

DOCKET ENTRIES

1964

Feb. 5 Complaint, appearance
Feb. 5 Summons, copies (6) and copies (6) of Complaint issued.
All ser 2/6/64. DA ser 2/6/64. AG ser 2/6/64.
Apr. 6 Answer of defts to complaint; c/m 4/6/64; appearance
of David C. Acheson, Joseph M. Hannon and Gil Zimmerman. filed
Apr. 6 Calendared (AC/N) (N)
Oct. 12 Called Assistaant Pretrial Examiner

1965

Mar. 12 First notice under Rule 13

Mar. 24 Interrogatories by plaintiff to defendants; c/s 3-24-65.
filed

Mar. 24 Request by plaintiff for admissions; exhibits (2); 3-24-65.
filed

Apr. 8 Motion of defendants for protective order & opposition to
plaintiff's interrogatories; c/m 4-8-65; P & A; MC 4-8-65.
filed

Apr. 9 Certificate of Readiness by plaintiff; c/m 4-9. filed

Apr. 16 Opposition of plaintiff to defendants motion for protective
order and reply to defendants opposition to plaintiff's in-
terrogatories. P&A, c/ser 4-16-65 filed

May 6 Motion of defendants for summary judgment; c/m 5/6/65;
statement; points and authorities; appendices A, B and C;
exhibit A; M.C. 5/6/65. filed

May 10 Transcript of proceedings 5/10/65, pages 1-13. (Reported
by E. Alfred Kaufman) (Court's copy) filed

May 11 Order granting without prejudice defendants' motion for
protective order and holding in abeyance all discovery;
granting plaintiff until July 10, 1965 to file cross-motion
for summary judgment and opposition to defendant's mo-
tion for summary judgment. (N) Youngdahl, J.

May 26 Supplement to motion of defendants for summary judg-
ment; Exhibit C; c/m 5/26/65. filed

June 15 Stipulation extending time for plaintiff to oppose motion
for summary judgment and to file cross-motion for sum-
mary judgment through September 13, 1965. (fiat) Young-
dahl, J.

Aug. 6 Stipulation extending time within which plaintiff may file
opposition to motion for summary judgment and his cross-
motion for summary judgment through November 15, 1965
(fiat) Jones, J.

Nov. 15 Opposition of plaintiff to defendants motion for summary

judgment; c/s 11/15/65; ser. ack. 11/15/65; statement; points and authorities; appendix I, with enclosures 1 thru 24; exhibits 1 thru 16. filed

Dec. 20 Motion of plaintiff for the docketing and for service by the Court upon plaintiff of government Exhibit B; points and authorities; c/s 12/20/65; M.C. 12/20/65. filed

1966

Jan. 5 Motion of plaintiff that his pending motion re: Govt. Ex. B, be treated as conceded and motion that defendants' proposed form of judgment be rejected by the Court; P&A, Exhibits 17, 18, & 19, ser/ack; 1-5-66; MC filed

Jan. 5 Motion of plaintiff that should judgment be entered for defendants the Court file a memorandum opinion; P&A; ser/ack 1-5-66; MC filed

Jan. 5 Order granting defendants' motion for summary judgment and dismissing action; all motions for discovery heretofore entered are moot (N) Corcoran, J.

Jan. 10 Transcript of proceedings 12/15/65, Vol I, pp. 1-27. (Rep Eva Marie Sanche) (Court's copy) filed

Jan. 10 Exhibit B to defts motion for summary judgment. filed

Jan. 17 Motion of plaintiff that Court make additional findings and vacate judgment, P&A c/m 1-17-66, MC filed

Jan. 20 Order denying plaintiff's motion that Court make additional findings pursuant to Rule 52(b) F.R.C.P.; denying plaintiff's motion to vacate judgment pursuant to Rule 59(e) F.R.C.P. (N) Corcoran, J.

Jan. 27 Motion of pltf for correction of error in the record arising from oversight or omission, exhibits 20 & 21; ser/ack 1/27/66. M.C. 1/27/66. filed

Jan. 27 Motion of pltf to vacate and stay order of Jan. 20, 1966, P&A; ser/ack 1/27/66. filed

- Jan. 28 Order denying motions of plaintiff that, should judgment be entered for the defendants, the Court file a memorandum opinion and that defendants proposed form of judgment be rejected by the Court. (N) micro 1-29-66 Corcoran, J.
- Jan. 28 Order denying motion of plaintiff that his pending motion (filed 12-20-65 for the docketing and service of Government Exhibit B be treated as conceded. (N) micro 1-29-66 Corcoran, J.
- Feb. 8 Order denying plaintiff's motion for correction of error in the record arising from oversight or omission. (N) Corcoran, J.
- Feb. 8 Order denying plaintiff's motion that the court's order of 1-20-66 be stayed and vacated. (N) Corcoran, J.
- Mar. 7 Notice of Appeal by plttf. from Order of January 5, 1966. Deposit, \$5.00 by Handler. Copy mailed to U.S. Atty. filed
- Mar. 9 Order allowing plttf. within 7 days to deposit \$250.00 cash; in lieu of cost bond for filing notice of appeal (N) Sirica, J.
- Mar. 16 Deposit of \$250.00 by plttf in lieu of Cost Bond on Appeal.
- Mar. 28 Transcript of Proceedings; pp 1-13; May 10, 1965. (Rep: E.A. Kaufman) Atty's. Copy filed
- Mar. 28 Transcript of Proceedings; pp 1-27; December 15, 1965. (Rep: Eva Marie Sanche) filed
- Mar. 31 Motion of plttf. for extension of time for filing record on appeal until May 9, 1966; P&A. c/ser. 3-31-66. Filed
- Apr. 4 Order granting plttf's. Motion for extension of time for filing record on appeal and docketing appeal until May 9, 1966. (N) McGarraghy, J.
- Apr. 22 Order extending time for filing record on appeal and docketing appeal through June 3, 1966. (N) McGarraghy, J.

[Filed Feb. 5, 1964]

COMPLAINT

Suit for Declaratory Judgment Fixing and Determining the Rights of Plaintiff to Salary From May 7, 1962, and From August 3, 1962, and the Rights of Plaintiff to Restoration to his Employment in the Metropolitan Area of Washington, D.C., in the U.S. Department of Labor, and for Other Relief in the Nature of a Mandatory Order Restoring Plaintiff to His Position.

Plaintiff, in proper person, complaining of the defendants herein, respectfully alleges:

1. This action arises under Title 5, United States Code, Sec. 863; entitled "Discharge, suspension, etc. only for cause . . .", known as the Veterans' Preference Act; under the Civil Service Commission Regulations promulgated under the mandate of the Veterans' Preference Act; under those laws creating the Civil Service Commission and authorizing it to promulgate rules and regulations to carry into full effect the provisions, intent, and purpose of various laws; under the laws creating the Department of Labor and authorizing the Secretary to make and promulgate Regulations for the conduct of said Department, and more specifically with reference to the Department of Labor Regulations, those portions of said Regulations designated respectively as Department of Labor Personnel Instruction No. 6(D-7), Revised August 8, 1960, and Personnel Instruction No. 30 (E-17), dated March 6, 1961.

2. Until his removal from the Department of Labor, effective August 3, 1962, with the exception of three years' of military service in the U. S. Marine Corps during World War II, plaintiff has been a classified civil service employee of the United States since January or February 1942. At the time of the acts herein complained of, plaintiff was entitled to preference under the Veterans' Preference Act of 1944.

3. In June 1960 plaintiff transferred from the Internal Revenue Service to the Bureau of Labor-Management Reports (BLMR) of the Department of Labor. Plaintiff had career status in his new position of General Investigator GS-12; his post of duty was in Washington, D.C.

4. Later, most of the investigators with jobs identical to that of plaintiff were reassigned from Washington, D.C., to field offices throughout the United States. One of those reassignments was that of plaintiff, whose reassignment to Detroit was to be effective April 30, 1961. But the effective date of the reassignment was deferred, ". . . both at the pleasure of the Bureau (BLMR) and the pleasure and request of Mr. Handler. The deferment was mutually agreeable. There was no problem on that." (Department of Labor representative, at page 274 of transcript of plaintiff's Civil Service Commission hearing, September 12, 1962.)

5. Thereafter, on June 7, 1961, plaintiff's immediate supervisor orally advised him that his reporting date to his new post of duty in Detroit would be set at June 12, 1961, and that written confirmation would follow. Plaintiff thereupon advised his supervisor that he had decided to avail himself of the Department of Labor's prescribed grievance procedures, and that he was filing a grievance protesting his reassignment to Detroit.

6. Later, that same day (June 7, 1961), at about 2:00 or 2:30 p.m., plaintiff's supervisor handed him a memorandum from plaintiff's Division Chief. The memorandum was dated June 7, 1961, and read in part as follows: ". . . you are now advised that you are to report to your new post of duty at Detroit, Michigan, effective 8:15 tomorrow morning, June 8, 1961. Any . . . leave arrangements should be made with the Area Director at Detroit."

7. Still later the same day (June 7, 1961), in a memorandum answering that of the Division Chief, plaintiff confirmed the filing of his grievance and noted that it was obviously impossible for him to be in Detroit at 8:15 the following morning.

8. And still later that day plaintiff received the Division Chief's answering memorandum which stated that plaintiff's Detroit reporting date has been deferred from June 8 to June 12, 1961.

9. And then by memorandum dated June 9, 1961, from his Division Chief, plaintiff was advised: "You have presented a grievance concerning your reassignment to the Detroit Area Office. In accordance with Personnel Instruction No. 6 which provides that any pending or proposed personnel action . . . which has been made the subject of a grievance . . . shall not be consummated pending settlement of the grievance . . . My memo of 6-7-61 which directed you to report to the Detroit Area Office Monday, 6-12-61, is postponed pending the outcome of your grievance."

10. In his October 9, 1961, decision of plaintiff's grievance, the BLMR Commissioner ruled that plaintiff's reassignment to Detroit should proceed. The decision set plaintiff's Detroit reporting date at November 6, 1961, so that plaintiff might attend a training class in Washington, D. C., scheduled to end on Saturday, November 4, 1961.

11. Plaintiff's Detroit reporting date was deferred again, in accordance with the Department of Labor's Personnel Instruction No. 6, when Plaintiff announced his intention to appeal the grievance decision to the Secretary of Labor.

12. Thereafter, on December 13, 1961 (the excessive delay is attributable not to plaintiff, but to the Department of Labor), exercising his right of appeal prescribed by the Department of Labor's Personnel Instruction No. 6, plaintiff filed a petition for review by the Secretary of Labor of the BLMR Commissioner's October 9, 1961, grievance decision to reassign plaintiff from Washington, D.C. to Detroit, Michigan.

13. The Department of Labor's Office of Personnel Administration thereafter, on February 1, 1962, addressed the following memorandum to the Secretary of Labor:

"February 1, 1962

To: The Secretary

From: Edward J. McVeigh; Director of Personnel.

Mr. Wilfred Handler, of the Bureau of Labor-Management Reports, has appealed to you from Mr. Holcombe's decision in the matter of his grievance in which he alleged he was unjustly reassigned from Washington, D.C. to Detroit, Michigan. Under the grievance procedure, Mr. Handler is permitted to appeal to the Secretary for a review of the record.

Mr. Handler's reassignment was proposed as a part of the decentralization of the Division of Financial Investigation. Mr. Handler requested and was accorded a hearing as provided in the grievance procedure. The Hearing Committee unanimously recommended Mr. Handler be reassigned as proposed.

To deal with this appeal, I recommend that you designate a staff member within the Office of the Secretary to make an analysis of the complete record and to make appropriate recommendations for its disposition. Attached is a memorandum designating Mr. David S. North to perform this function in this case.

Attachment:

HEF: EJM: jer

cc: Mr. McVeigh

Mr. Roberts

Mr. Hale"

14. Plaintiff's petition for a Secretarial review of his grievance (Paragraph No. 12 above) described certain defects in the grievance proceedings, each a violation of the Department of Labor's Personnel Instruction No. 6, including the following four procedural defects:

1. Before holding the formal grievance hearing, and without plaintiff's knowledge, the Grievance Committee granted BLMR Management a private hearing.

2. Plaintiff did not receive an opportunity equal to that of BLMR Management to correct the grievance hearing transcript.

3. The Department of Labor's Office of Personnel Administration representative, present at the grievance hearing as required, refused to give the Grievance Committee relevant information, in violation of his prescribed duties and to plaintiff's detriment.

4. Under the alleged but incorrect belief that it was not a proper subject for grievance hearings, the Grievance Committee persistently inhibited plaintiff's presentation of his grievance by attempting to exclude all testimony regarding Management's selection of those investigators to remain in Washington, D.C., and those to be reassigned out of Washington.

15. On April 2, 1962, the Department of Labor's Office of Personnel Administration forwarded to plaintiff a photo copy of the Secretary of Labor's ostensible decision of plaintiff's grievance.

16. The Secretary of Labor's ostensible decision appears on a typewritten memorandum dated February 27, 1962, to "The Secretary" from David S. North. The Memorandum makes specific recommendations for disposition of the grievance. In the upper portion of the memorandum's first page is handwritten: "OK A.J.G. 3/30/62."

17. By memorandum of April 23, 1962, the Acting Commissioner of BLMR advised plaintiff:

"In accordance with the Secretary of Labor's decision of March 30, 1962 concerning your grievance, I have been informed by Mr. McVeigh that there are no vacancies in the Washington, D.C. — Maryland area for which you would be qualified. A canvass has also been made in the Bureau of Labor-Management Reports. This also discloses no suitable vacancies in the Washington Metropolitan area and Maryland.

You are therefore being assigned to the Detroit Area Office on May 6, 1962. Please report for duty on Mon-

day morning May 7, 1962 to the Area Director . . . ,
Detroit, Michigan . . ."

18. Plaintiff did not report for duty in Detroit on May 7, 1962 -- plaintiff has never reported to Detroit. Since May 7, 1962, plaintiff has been denied the right to work at his position in Washington, D.C.

19. In a letter dated June 6, 1962, amplified by a memorandum dated June 7, 1962, the BLMR Commissioner notified plaintiff of charges preferred against him, and of the proposal to end plaintiff's employment with the Department of Labor by effecting the following action: "Separation--Failure to Accompany Activity to Detroit, Michigan."

20. In memoranda to plaintiff dated June 28 and July 18, 1962, respectively, the BLMR Commissioner furnished additional information about the June 6, 1962, letter proposing the plaintiff's separation for failure to accompany activity. The reasons for the proposed action to end plaintiff's employment, as described in the BLMR Commissioner's letter of June 6, 1962, were materially changed by the Commissioner's subsequent memorandum of June 28, 1962, and again by the Commissioner's memorandum of July 18, 1962.

21. Neither the BLMR Commissioner's letter of June 6, 1962, notifying plaintiff of the charges preferred against him, nor the subsequent memoranda of June 28 and July 18, 1962, adequately and unequivocally notified plaintiff of his status during the period the charges would be pending.

22. In his memorandum of July 18, 1962, the BLMR Commissioner allowed plaintiff 3 days from receipt of that memorandum in which to answer the charges preferred against him. Plaintiff did not answer.

23. Plaintiff's employment with the Department of Labor was ended by the Department as of August 3, 1962. The action effected was "Removal"; the "Removal" action was effected by the Department by means of a Standard Form 50 dated August 1, 1962. Plaintiff has been deprived of his status as an employee of the Department of Labor since August 3, 1962.

24. Plaintiff appealed to the Civil Service Commission for relief, pursuant to Section 14 of the Veterans' Preference Act. The proceedings and the hearing conducted by the Civil Service Commission's Appeals Examining Office were procedurally defective as follows:

1. The Civil Service Commission did not conduct an "investigation" in an acceptable sense of the word.

2. During the hearing afforded plaintiff, the hearing examiner persistently advised plaintiff that the exhibits plaintiff was introducing at appropriate points during the hearing were required by Civil Service Regulations and Rules to have been submitted before the hearing started. Actually, prior to the hearing, the Civil Service Commission had advised plaintiff orally and in writing that any pertinent evidence might be presented during the hearing.

3. Plaintiff's presentation of his case during the Civil Service Commission hearing was further inhibited by other evidences of the hearing examiner's hostility, unreasonableness, unfairness and bias.

4. A week after the end of the Civil Service Commission hearing, the hearing examiner accepted into evidence written testimony from the Department of Labor (a memorandum dated September 12, 1962, from Arthur J. Goldberg to David S. North) in violation of Civil Service Commission Regulations (Sec. 22.401) which prescribe that the testimony be in affidavit form. The memorandum in question not only fails to meet the affidavit requirement of written testimony, it fails even to meet the less stringent Civil Service stipulation that any documents submitted into evidence "should be certified as true copies." This written testimony is given great weight in the Appeals Examining Office's decision of plaintiff's appeal.

25. In a decision dated December 11, 1962, the Appeals Examining Office of the Civil Service Commission recommended "that no change be made in the personnel action of the Department of Labor in effecting the removal of Mr. Handler on August 3, 1962."

26. In a letter of decision to plaintiff dated June 4, 1963, the Board of Appeals and Review of the Civil Service Commission affirmed the decision of the Appeals Examining Office.

27. In a letter of August 26, 1963, to the U. S. Civil Service Commission, plaintiff wrote:

"In order to make unnecessary the filing of a legal action which I am preparing, and in accordance with Section 22.504 of the Commission's Regulations, please reopen and reconsider the (Board of Appeals and Review) decision . . .

"The decision of the Board of Appeals and Review is a fraud -- it was written in contemptible deliberate disregard not only of my rights under the Commission's Regulations, but of the Commission's own legal duties under those same regulations.

"I can of course prove the preceding statement. But to make me do so in court would be an imposition on me, on the court, and on the taxpayers who pay your salaries."

28. For all purposes, this Complaint adopts the material quoted in Paragraph No. 27 above.

29. After some intervening correspondence, in a letter dated January 7, 1964, received by plaintiff January 9, 1964, the Civil Service Commission advised plaintiff that "the request for reopening of your case is denied."

30. Plaintiff asserts that his removal is vitiated by fraud, and by procedural defects, first in the Department of Labor's removal action, and second in the subsequent proceedings and review in the Civil Service Commission.

31. Fraudulent procedural defects in the Department of Labor's Removal action:

1. The action effected against Plaintiff, 'Removal,' is more severe than the action proposed, 'Separation -- Failure to Accompany

Activity." This violates Part 22 of the Civil Service Commission's regulations promulgated at the mandate of the Veterans' Preference Act.

2. The "Removal" action is more severe than that prescribed by Chapter S-1-3 of the Federal Personnel Manual for an employee's failure either to "Accompany Activity" or to "Accept New Assignment."

3. Since the BLMR Commissioner's memorandum of July 18, 1962, materially changes the stated reasons for the proposed ending of plaintiff's employment with the Department of Labor, and since plaintiff's employment with the Department of Labor, and since plaintiff's Removal was effected as of August 3, 1962, plaintiff had less than 30 days' advance written notice of the reasons for his proposed separation. This is in violation of Section 14 of the Veterans' Preference Act of 1944, as Amended; it is in violation of Part 22 of the Civil Service Commission's regulations promulgated in accord with the mandate of the Veterans' Preference Act.

4. Since the BLMR Commissioner's memorandum of July 18, 1962, materially changes the letter of June 6, 1962, proposing adverse action against plaintiff, and since the July 18 memorandum contains information that would affect the entire complexion of any answer plaintiff might have made to the reasons advanced for his proposed separation, and since the July 18 memorandum gives plaintiff only 3 days in which to answer the charges preferred against him, plaintiff had less than the minimum 10 day period in which to answer the letter proposing adverse action. Part IV F2c of the Department of Labor's Personnel Instruction No. 30 prescribes a minimum period of 10 days in which an employee may answer a letter proposing adverse action against him.

5. Plaintiff's removal was preceded by grievance proceedings as required by the Department of Labor's Personnel Instruction No. 6; but these grievance proceedings were defective.

(a) Grievance defects Nos. 1-4: See Paragraph No. 14 of this Complaint.

(b) Grievance defect No. 5: The Department of Labor's Office of Personnel Administration fraudulently withheld from the Secretary of Labor plaintiff's petition for Secretarial review of the grievance decision (Paragraphs 12 and 14 of this Complaint). Plaintiff's petition to the Secretary was in the form of a 52 page brief stating plaintiff's bases for the appeal. As required by the Department's Personnel Instruction No. 6, the brief was submitted by plaintiff through the Director of Personnel. But the brief was not included with those grievance records forwarded to the Secretary of Labor for review. It was fraudulently withheld by the Department of Labor's Office of Personnel Administration — the Office of Personnel Administration then fraudulently advised plaintiff that his brief had in fact been forwarded for Secretarial review.

(c) Grievance defect No. 6: The ostensible grievance decision by the Secretary of Labor is a forgery. "OK A.J.G. 3/30/62" — the Secretary's ostensible grievance decision (Paragraph No. 16 of this Complaint) — was not written by the Secretary of Labor; it is a forgery. The ensuing change in plaintiff's post of duty was therefore unauthorized. Plaintiff asserts that he therefore was not obliged to report to his "new post of duty," and that his failure to so report is not such cause for his removal" as will promote the efficiency of the service" (Veterans' Preference Act of 1944, Sec. 14).

6. Neither the written notice to plaintiff of the proposal to separate him, nor the subsequent memoranda of June 28 and July 18, 1962, amending that notice, adequately notify plaintiff of his status pending his receipt of the Department of Labor's decision of the separation proposal. This violates the Department of Labor's Personnel Instruction No. 30.

32. Plaintiff asserts that with full knowledge of the violations involved, Department of Labor officials deliberately and willfully, acting in bad faith, committed each of the 6 procedural defects enumerated in Paragraph No. 31 above.

33. As for the Civil Service Commission proceedings, the 4 defects enumerated at Paragraph No. 24 of this Complaint were committed by

the Appeals Examining Office deliberately and willfully. Regarding the subsequent decision of that office; in his letter of December 19, 1962, appealing to the Civil Service Commission's Board of Appeals and Review from the Appeals Examining Office decision of December 11, 1962, plaintiff said: "In essential parts, the decision of the Appeals Examining Office is incomprehensible . . . In every issue discussed therein . . . the decision . . . adversely affects me in one or more of the following ways: . . . the omission of essential facts, the distortion of facts, the omission of my major argument, the misstatement of my major argument -- to the point of exactly reversing it, the inclusion of irrelevant material obviously calculated to mislead and intimidate me."

34. For all purposes, this Complaint adopts the quoted material in the preceding paragraph. Plaintiff further asserts that the December 11, 1962, Appeals Examining Office decision of his appeal is a fraud designed to distort and to deceive, that it is part of an elaborate scheme by the Civil Service Commission to defeat the Veterans' Preference Act and the regulations promulgated thereunder.

35. Plaintiff further asserts that the Board of Appeals and Review (Civil Service Commission) decision of June 4, 1963, is part of the elaborate scheme mentioned in the preceding paragraph, and that the Board's decision is fraudulent in that it affirmed the decision of the Appeals Examining Office knowing it to be fraudulent. In addition, the Board deliberately and fraudulently, with intent to defeat the law and the Commission's regulations, refused to discharge its obligations under the Veterans' Preference Act of 1944 and regulations promulgated thereunder, when it said in its decision: "Since the circumstances in your case make clear that you were in fact discharged, the standard terminology, whether 'Removal' or 'Separation--Failure to accompany activity to Detroit, Michigan,' used for reporting your discharge on the official notification of personnel action is found by the Board to be inconsequential to the determinations necessary for the proper adjudication of your appeal under Section 14."

36. Neither the Appeals Examining Office decision, nor that of the Board of Appeals and Review, ruled on the alleged procedural grievance defects noted in Paragraph 14 of this Complaint.

37. Plaintiff further asserts that the September 12, 1962, memorandum to David S. North from Arthur J. Goldberg, submitted to the Civil Service Commission by the Department of Labor, is a fraud. (See Item 4, Paragraph No. 24 of this Complaint.) The purported signature on the memorandum, of the then Secretary of Labor Arthur J. Goldberg, is a forgery perpetrated by the Department of Labor's Office of Personnel Administration; or it is a genuine signature secured by that office under false pretenses.

38. Plaintiff asserts further that the Department of Labor's change in his post of duty effective May 6, 1962 (the failure to accept which led to plaintiff's removal), was arbitrary, capricious, done in bad faith, in that BLMR and Department of Labor officials did not in good faith comply with the Secretary of Labor's directive that plaintiff's post of duty be changed from Washington, D. C., only if a canvass of job opportunities for plaintiff in BLMR and other Department of Labor Bureaus failed to find a suitable opening for plaintiff in Washington, D.C. Plaintiff's post of duty was changed, even though there was knowingly retained in Washington, D.C., in a BLMR position identical to that of plaintiff, an employee whose original hiring had been knowingly illegal, whose retention in Washington in that position was knowingly illegal, whose official personnel records were falsified by BLMR officials specifically to conceal the illegalities just mentioned. Also retained in Washington, D.C., in a BLMR position identical to that of plaintiff, was an employee who had been scheduled for transfer to Detroit before plaintiff had been so scheduled, but whose transfer had been rescinded not to promote the efficiency of the service, but only to appease political pressures.

39. Plaintiff asserts that further evidence of the Department of Labor's fraudulent failure, after the grievance proceedings, to make a

good faith canvass of Washington, D.C., job opportunities for plaintiff, is found in the Department's resolution and determination that plaintiff would not in fact work in Washington even during his mandatory retention there pending the outcome of his grievance. Hence the fraudulent job detail to which plaintiff was subjected during the approximately 11 months that the grievance remained pending. The last named fraud is evidenced by, among other things, the fraudulent Standard Form 52 belatedly furnished plaintiff, documenting his detail to a position that in fact did not exist; by the fraudulent Standard Form 59, belatedly submitted by the Department of Labor to the Civil Service Commission, to justify the extension of the job detail to a non-existent position even beyond the normal 6 month limitation of job details; by the failure of plaintiff's purported supervisor on the job detail to assign work to plaintiff because his (the purported supervisor's) Branch office had never received documentation of plaintiff's detail to that Branch, and because, during the alleged detail period, the purported supervisor's authority over plaintiff admittedly ranged from simply maintaining plaintiff's leave records and providing plaintiff with desk space, to absolutely no authority whatsoever.

40. BLMR's bad faith in changing plaintiff's post of duty as of May 6, 1962 (which led to plaintiff's removal), is further evidenced by BLMR's simultaneous disparate handling of another employee who had filed a grievance with issues which the BLMR Commissioner had called "identical" to those of plaintiff's grievance. (Plaintiff represented the other employee in the processing of the latter's grievance; each of the two grievances was heard by a different committee.) On April 23, 1962, the same day that BLMR notified plaintiff of the change in his post of duty effective May 7, 1962, BLMR officials received the grievance committee's recommendations sustaining the other grievant's objection to the change in his post of duty. Plaintiff was not permitted to work at his position in Washington, D.C., effective May 7, 1962; plaintiff's removal

was proposed in a letter dated May 14, 1962, the proposal was reworded on June 6, 1962; but meanwhile the BLMR Commissioner was unable to reach his decision to transfer the other grievant out of Washington, D.C. (overruling the committee's recommendations), until June 18, 1962, 6 weeks past the due date prescribed by the Department of Labor's Personnel Instruction No. 6, 8 weeks after the grievance committee's recommendations had been submitted to the BLMR Commissioner.

41. Plaintiff asserts that his removal was arbitrary, capricious, done in bad faith, without such cause as will promote the efficiency of the service, in that the May 6, 1962, change in his post of duty, and his subsequent removal, were effected improperly by unscrupulous superiors who were determined to discourage and punish the resort to the prescribed grievance procedures invoked by plaintiff. Beginning only hours after plaintiff filed his grievance, and continuing until his ultimate removal, BLMR officials practiced all manner of reprisals against plaintiff. The decision of the Appeals Examining Office (Civil Service Commission) cites only some of these reprisals, but utilizing the distortions noted earlier in this Complaint, refuses to recognize them as reprisals. These reprisals include BLMR Management's failing to assign work to plaintiff, although work was available; the assignment of other employee's to surreptitiously spy upon plaintiff and to submit detailed written reports of plaintiff's attendance at a training class (despite the spys' written reports confirming plaintiff's attendance, BLMR Management later wrote ominous memoranda to plaintiff questioning his attendance); Management's wording of plaintiff's performance rating so as to give the impression that although designated officially as "satisfactory," plaintiff's performance was not in fact satisfactory — and then when plaintiff objected, falsely telling plaintiff that the admittedly inappropriate rating notice had not been intended for his official personnel folder.

42. Only with reluctance, and only after painstaking study of the record, and only after carefully evaluating validity and relevancy, has

plaintiff included in this Complaint allegations of blatant fraud, including the following:

Forgery,
False pretenses,
Falsification of official records,
Distortion,
Intimidation,
Elaborate scheme to defeat the law.

The allegations are valid. The allegations are relevant.

43. On May 7, 1962, when the Department of Labor refused to allow plaintiff to report for duty in its Washington, D.C., offices, plaintiff's legal post of duty was Washington, D.C.

44. On August 3, 1962, when the Department of Labor terminated plaintiff's "notice period" and effected his removal, plaintiff's legal work status was that of active duty, post of duty Washington, D.C. (Chapter S-1, Federal Personnel Manual.)

45. Plaintiff has exercised the greatest diligence in prosecuting his claim for retention as an employee of the Government up to and including his request of August 26, 1963 (and subsequent related letters), that the Civil Service Commission reopen and reconsider its Board of Appeals and Review decision of June 4, 1963. That request was first implicitly granted; but later it was explicitly denied in the Civil Service Commission's final letter of January 7, 1964.

WHEREFORE, plaintiff prays:

1. That due process of this court issue demanding that the defendants appear and answer this Bill of Complaint.

2. That plaintiff have judgment against defendants fixing and determining his rights as a preferential employee of the United States and fixing said rights so as to adjudicate that plaintiff is entitled to the position in Washington, D.C., from which he was illegally removed.

3. That mandatory injunction issue, directed to the Secretary of Labor, to restore plaintiff to his rightful position in Washington, D.C., from which he was illegally removed.

4. That plaintiff have judgment against defendants fixing and determining his rights to salary from May 7, 1962, and from August 3, 1962.

5. That plaintiff be granted such other relief as to the court may appear equitable.

/s/ Wilfred Handler
Pro se
3218 Shelburne Road
Baltimore, Maryland
Mailing Address:
P. O. Box 1052
Baltimore, Maryland 21203

[Filed Apr. 6, 1964]

ANSWER

Defendants by their attorney, the United States Attorney for the District of Columbia, on the basis of the certified administrative records answer the allegations in the complaint as follows:

1. Admit that the Court has jurisdiction to conduct limited judicial review (on the basis of the certified administrative records) of the personnel actions taken in plaintiff's case, to determine whether they conformed to the governing law and regulations. Affirmatively aver that Labor Department Personnel Instruction No. 6(D-7) was again revised on January 19, 1962, and that Personnel Instruction No. 30 (E-17) was revised on February 27, 1963.

2.-3. Admit the allegations contained in paragraphs 2-3 of the complaint.

4. Admit the allegations contained in paragraph 4 of the complaint. Affirmatively aver the plaintiff's reassignment was originally directed to Chicago; but it was changed to Cleveland, and then to Detroit, at his

request; and the effective date of his reassignment was also changed several times.

5.-11. Admit the allegations contained in paragraphs 5-11 of the complaint.

12. Deny that any "excessive delay" occurred. Admit the remaining allegations contained in paragraph 12 of the complaint.

13-15. Admit the allegations contained in paragraphs 13-15 of the complaint, except that it is denied that any procedural defects, or violations of any duties or rights, or other errors of any nature, occurred.

16. Admit the allegations contained in paragraph 16 of the complaint. Affirmatively aver the Secretary of Labor personally ratified the decision.

17. Admit the allegations contained in paragraph 17 of the complaint.

18. Admit that plaintiff did not report for duty in Detroit on May 7, 1962 or at any time thereafter. Deny that since May 7, 1962 plaintiff had any position in Washington, D.C., or was denied the right to work in any Washington, D.C. position held by him. Affirmatively aver that after May 7, 1962 plaintiff's duty post was in Detroit, Michigan as a consequence of the decentralization of the activity to which he was assigned from the national office to the field offices.

19. Admit the allegations contained in paragraph 19 of the complaint.

20. Deny that the reason for plaintiff's proposed removal was materially changed by the memoranda dated June 28 and July 28, 1962 the Commissioner of the Department of Labor's Bureau of Labor-Management Reports (hereinafter "Commissioner") sent plaintiff. Admit the other allegations contained in paragraph 20 of the complaint.

21. Deny the allegations contained in paragraph 21 of the complaint.

22. Admit the allegations contained in paragraph 22 of the complaint, except that it is affirmatively averred that the ten-day period

for answering the charges (with the interruptions allowed for additional and clarifying information) was to run out on July 19, 1962, and was extended for two additional days by the Commissioner's July 18, 1962 memorandum.

23. Admit the allegations contained in paragraph 23 of the complaint, except that it is denied that plaintiff was "deprived" of any status as an employee of the Department of Labor since August 3, 1962. Affirmatively aver that the Standard Form 50 "Notification of Personnel Action" dated August 1, 1962 was corrected by issuance of another such form stamped "payroll copy forwarded September 20, 1962."

24. Deny that the proceedings and hearing conducted in plaintiff's case by the Civil Service Commission's Appeals Examining Office were in any way procedurally or otherwise defective. Deny all the allegations, conclusory or otherwise, claiming error occurred in those proceedings and hearing. Admit the remaining factual allegations contained in paragraph 24 of the complaint. Affirmatively aver that such proceedings and hearing were fully in conformance with the governing law and regulations.

25.-26. Admit the allegations contained in paragraphs 25-26 of the complaint.

27.-28. Admit that plaintiff wrote the letter of August 26, 1963. Deny that the decision of the Civil Service Commission Board of Appeals and Review was a fraud or was otherwise improper, or was in derogation of any of plaintiff's legal rights or the Commission's legal duties.

29. Admit the allegations contained in paragraph 29 of the complaint.

30.-45. Deny that plaintiff's removal is vitiated by any fraud, forgery, procedural defects, etc., on the part of either the Department of Labor or the Civil Service Commission. Affirmatively aver that the actions of both agencies were in full conformance with law and regulations. Admit the remaining factual, non-conclusory allegations con-

tained in paragraphs 30-45 of the complaint, not inconsistent with such denial and affirmative averment.

[Filed Mar. 24, 1965]

**PLAINTIFF'S INTERROGATORIES TO DEFENDANTS.
RULE 33, FEDERAL RULES OF CIVIL PROCEDURE**

TO CHAIRMAN OF THE CIVIL SERVICE COMMISSION AND
EACH OF THE TWO MEMBERS OF THE CIVIL SERVICE
COMMISSION, DEFENDANTS:

Plaintiff requests that the following interrogatories be answered, under oath, by any of your officers competent to testify in your behalf who know the facts about which inquiry is made, and that the answers be served on plaintiff within 15 days from the time these interrogatories are served on you.

A. For each of the following persons, please state the name, present residential address, name of present employer and address where presently employed, and title of present position.

(1) Each person identified by the reference symbols that appear on the June 4, 1963, Board of Appeals and Review decision of plaintiff's appeal, namely, BAR:JWH:IS:plb.

(2) The author, or authors, of the Board of Appeals and Review decision cited in item (1) immediately above.

(3) Each person identified by the reference symbols that appear on the Form DAE 9 that transmitted to plaintiff the December 11, 1962, Appeals Examining Office decision of plaintiff's appeal, namely, XAE: - RBB:gdc.

(4) The author, or authors, of the Appeals Examining Office decision cited in item (3) immediately above.

(5) The person who signed the original of the decision cited in item (1) above.

(6) The person who signed the original of the decision cited in item (3) above.

(7) The person who wrote the ostensible signature of Mary V. Wenzel on the January 7, 1964, letter advising plaintiff that his request of the Civil Service Commission for reopening his appeal had been denied.

(8) The person or persons who recommended and who approved the denial cited in item (7) immediately above.

(9) All persons, if any, not already named in your answers to items (1) through (8) above, who contributed to the authorship or approval of the decisions cited in items (1) and (3) above.

B. Please state the pertinent function performed by each of the persons named in your answers to items A(1), (3), and (9) above.

/s/ Wilfred Handler
Plaintiff, Pro se

[Filed Apr. 8, 1965]

**DEFENDANTS' MOTION FOR PROTECTIVE ORDER
AND OPPOSITION TO "PLAINTIFF'S INTERROGA-
TORIES TO DEFENDANTS, RULE 33, FEDERAL
RULES OF CIVIL PROCEDURE"**

Come now defendants by their attorney, the United States Attorney for the District of Columbia, and move the Court for a protective order under Rules 30(b) and 33, F.R.C.P., and oppose plaintiff's "Interrogatories to Defendants, Rule 33, Federal Rules of Civil Procedure."

Defendants pray:

(1) That the Court stay any action in respect of said interrogatories, pending further order of this Court, following upon its disposition of defendants' motion for summary judgment, which is now in process of preparation;

(2) That the Court also stay resort to any other discovery procedure in this case pending further order of the Court, following upon its disposition of defendants' motion for summary judgment; and

(3) That the Court now temporarily grant a stay in this matter pending determination of the present motion.

STATEMENT

This is a civil service employee discharge case. It presents solely a question of law for determination by the Court. This Court, in the proper performance of its judicial review function, is limited to conducting such review on the basis of the certified record of the Civil Service Commission proceedings on plaintiff's appeal to the Commission from the agency's discharge action. That record, which will be filed with the Court as a Government exhibit accompanying defendant's motion for summary judgment, discloses that plaintiff was properly accorded a de novo hearing before the Commission in accordance with the Commission's regulations.

Plaintiff's conclusory allegation to the effect the Commission acted "fraudulently" in reaching its determination on plaintiff's appeal, does not provide any foundation to warrant the Court permitting plaintiff to conduct "fishing expedition" discovery into the Commission's decision-making process. Nor is there any other basis here for the Court to conduct a de novo trial in this matter, or for any other reason to receive and consider evidence dehors the certified record of the Civil Service Commission appellate proceedings.

Accordingly, good cause exists for the Court to stay any and all discovery in connection with the present suit for judicial review, pending further order of the Court following upon its disposition of defendants' motion for summary judgment.

We waive oral hearing, and submit our motion for stay on the basis of the foregoing statement and the attached memorandum of points and authorities.

[Filed Apr. 16, 1965]

**PLAINTIFF'S OPPOSITION TO DEFENDANTS'
- MOTION FOR PROTECTIVE ORDER AND
PLAINTIFF'S REPLY TO DEFENDANTS' OP-
POSITION TO PLAINTIFF'S INTERROGATORIES**

Comes now the plaintiff in proper person and opposes defendants' motion for protective order (on the grounds that good cause for such an order is non-existent) and replies to defendants' opposition to plaintiff's interrogatories (contending that defendants' opposition is not founded on fact).

In support of his opposition and reply, plaintiff attaches hereto a memorandum of points and authorities.

Oral hearing is requested.

/s/ Wilfred Handler
Plaintiff, pro se

[Filed Apr. 16, 1965]

**PLAINTIFF'S MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF OPPOSITION TO
DEFENDANTS' MOTION FOR PROTECTIVE ORDER
AND OF REPLY TO DEFENDANTS' OPPOSITION TO
PLAINTIFF'S INTERROGATORIES**

**PLAINTIFF WAIVES UNTIMELINESS OF DEFENDANTS'
MOTION, CONDITIONALLY**

With respect to plaintiff's interrogatories already filed, defendants' motion and opposition are not timely (and defendants have failed to answer the interrogatories). But, in order that defendants' motion and opposition may be considered on their merits, plaintiff waives the

defect of untimeliness, provided that defendants be precluded from filing their promised motion for summary judgment until their pending motion is finally ruled upon, and, if the Court denies defendants' prayer number (1), until the interrogatories are answered. Plaintiff stipulates these conditions on the following two grounds:

1. Defendants' failure to answer the interrogatories is grounds at this time for a motion for the entering of a judgment for plaintiff by default. (Rule 37(d), F.R.C.P.)

2. The past-due answers to the interrogatories would enable plaintiff to better oppose defendants' promised motion for summary judgment, and would enable plaintiff to better prepare a cross-motion for summary judgment. Defendants should therefore not be permitted to file a motion for summary judgment until the Court rules on defendants' request that the past-due answers to the interrogatories be stayed, and, if the Court denies defendants' request, until the interrogatories are answered.

* * *

[Filed May 6, 1965]

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Come now defendants by their attorney, the United States Attorney for the District of Columbia, and move the Court for summary judgment on the ground there is no issue as to any material fact, and defendants are entitled to judgment as a matter of law.

Incorporated herein and made a part hereof by attachment are the relating certified Civil Service Commission records which are identified as Government Exhibit "A". Also incorporated herein, but made a part hereof by reference, is the transcript of the hearing held on plaintiff's appeal to the Civil Service Commission on September 10, 1962 which is identified as Government Exhibit "B".

In support hereof, defendants submit a statement of material facts and a memorandum of points and authorities.

[Filed May 6, 1965]

[Excerpts from Government Exhibit A.]

I, Mary V. Wenzel, Executive Assistant to the Commissioners, United States Civil Service Commission, certify that the documents attached hereto relate to the appeal of Wilfred Handler, filed with the Commission under Section 14 of the Veterans' Preference Act of 1944, as amended, and are true copies of official documents under my custody and control.

/s/ Mary V. Wenzel
Executive Assistant
to the Commissioners
Washington, D.C.
May 8, 1964

Handler v. Secretary of Labor
et al. Government Exhibit A

[From Government Exhibit A]

Wilfred Handler v. Sec. Labor, et al.
D.C. D.C. No. 304-64

ENCLOSURES

- | | |
|-------------------|---|
| 1. April 23, 1962 | - Memo to Handler from Kleiler
re: change in duty status. |
| 2. May 3, 1962 | - Memo to Handler from Holcombe
re: change in duty status. |
| 3. May 4, 1962 | - Memo to Holcombe from Handler:
refusal to accept reassignment. |

4. May 4, 1962
 - Memo to Handler from Shinn.
5. May 4, 1962
 - Memo to Shinn from Handler.
6. May 4, 1962
 - Memo to Handler from Holcombe.
7. May 11, 1962
 - Letter to Handler from Holcombe:
Advance Notice of Proposed Removal.
8. May 22, 1962
 - Memo to Holcombe from Handler.
9. June 6, 1962
 - Letter to Handler from Holcombe:
Amended Advance Notice of Proposed
Removal.
10. June 7, 1962
 - Memo to Handler from Holcombe.
11. June 12, 1962
 - Memo to Holcombe from Handler.
12. June 21, 1962
 - Memo to Holcombe from Handler.
13. June 24, 1962
 - Letter to the Secretary from Handler
and Burdette.
14. June 28, 1962
 - Memo to Handler.
15. June 29, 1962
 - Memo to Handler and Burdette from
Shulman.
16. July 5, 1962
 - Memo to Holcombe from McVeigh.
17. July 10, 1962
 - Memo to Shulman from Handler and
Burdette.
18. July 11, 1962
 - Letter to Handler from McVeigh.
19. July 12, 1962
 - Memo to Holcombe from Handler.
20. July 18, 1962
 - Memo to Handler.
21. July 23, 1962
 - Memo to McVeigh from Handler.
22. July 23, 1962
 - Memo to Office of Welfare and Pension
Plan from Handler.
23. July 25, 1962
 - Letter to Handler from McVeigh.
24. July 30, 1962
 - Memo to Holcombe from Handler.

- | | |
|------------------------|--|
| 25. August 1, 1962 | - Notice of Removal effective 8/3/62. |
| 26. August 1, 1962 | - Standard Form 50 - Removal effective 8/3/62. |
| 27. August 8, 1962 | - Memo to Holcombe from Handler. |
| 28. August 9, 1962 | - Memo to Handler from Moore. |
| 29. August 11, 1962 | - Appeal to Chicago Civil Service Region from Handler. |
| 30. August 11, 1962 | - Appeal to Appeals Examining Office, Civil Service Commission. |
| 31. August 13, 1962 | - Letter to Appeals Examining Office from Handler. |
| 32. August 20, 1962 | - Letter to Handler from Bates. |
| 33. August 28, 1962 | - Letter to Bates from Handler with affidavit. |
| 34. August 29, 1962 | - Letter to Bates from Handler. |
| 35. August 29, 1962 | - Letter to Bates from Finnegan. |
| 36. September 6, 1962 | - Letter to Bates from Handler. |
| 37. September 10, 1962 | - Hearing Exhibits. |
| 38. September 18, 1962 | - Letter to Appeals Examining Office from McVeigh with enclosures. |
| | SF 50 dated 9/18/62. |
| | Memo to North from Goldberg dated 9/12/62. |
| 39. September 19, 1962 | - Letter to Bates from Handler. |
| 40. September 19, 1962 | - Letter to Bates from Handler. |
| 41. September 19, 1962 | - Letter to Bates from Handler with 12 enclosures. (No. 8 is missing.) |
| 42. September 20, 1962 | - Letter to Bates from Handler. |
| 43. September 26, 1962 | - Letter to Bates from Handler. |

- | | |
|-----------------------|---|
| 44. October 8, 1962 | - Letter to Handler from McVeigh. |
| 45. October 11, 1962 | - Letter to Bates from Handler including 2 enclosures. |
| 46. October 15, 1962 | - Letter to McVeigh from Handler. |
| 47. October 15, 1962 | - Letter to Yeager from Handler. |
| 48. October 16, 1962 | - Letter to Handler from North. |
| 49. October 18, 1962 | - Letter to Handler from Yeager. |
| 50. October 22, 1962 | - Letter to North from Handler. |
| 51. October 23, 1962 | - Letter to Handler from North. |
| 52. November 5, 1962 | - Letter to North from Handler. |
| 53. November 12, 1962 | - Letter to McVeigh from Handler. |
| 54. November 23, 1962 | - Letter to Handler from McVeigh. |
| 55. December 5, 1962 | - Letter to North from Handler. |
| 56. December 6, 1962 | - Letter to Handler from North. |
| 57. December 9, 1962 | - Letter to Bates from Handler. |
| 58. December 11, 1962 | - Decision of Appeals Examining Office denying appeal. |
| 59. December 19, 1962 | - Appeal to Board of Appeals and Review. |
| 60. February 12, 1963 | - Letter to Elliott from Handler enclosing a copy of a letter to the Board of Appeals and Review. |
| 61. March 7, 1963 | - Letter to Hillyard from Yeager. |
| 62. March 27, 1963 | - Letter to the Board of Appeals and Review from Handler. |
| 63. March 27, 1963 | - Letter to Appeals Examining Office from Handler. |
| 64. March 29, 1963 | - Letter to Handler from Groark. |
| 65. June 4, 1963 | - Board of Appeals and Review decision denying appeal. |

- | | |
|------------------------|--|
| 66. August 26, 1963 | - Request to Civil Service Commission from Handler for reconsideration of the 6/4/63 decision. |
| 67. August 29, 1963 | - Letter to Handler from Groark. |
| 68. September 19, 1963 | - Letter to Civil Service Commission from Handler. |
| 69. September 26, 1963 | - Letter to Handler from Groark. |
| 70. October 7, 1963 | - Letter to Groark from Handler. |
| 71. October 27, 1963 | - Letter to Groark from Handler. |
| 72. October 29, 1963 | - Letter to Handler from Groark. |
| 73. November 12, 1963 | - Letter to Groark from Handler. |
| 74. December 2, 1963 | - Letter to McVeigh from Handler. |
| 75. December 3, 1963 | - Letter to Groark from Handler. |
| 76. January 7, 1964 | - Denial by Civil Service Commission for reconsideration of the 6/4/63 decision. |

[Government Exhibit A - Enclosure No. 1]
[Filed May 6, 1965]

U. S. DEPARTMENT OF LABOR
Bureau of Labor-Management
Reports

Date: Apr. 23, 1962

UNITED STATES GOVERNMENT

MEMORANDUM

To: Mr. Wilfred Handler
From: Frank M. Kleiler
Acting Commissioner
Subject: Change in Official Duty Station

In accordance with the Secretary of Labor's decision of March 30, 1962 concerning your grievance, I have been informed by Mr. McVeigh

that there are no vacancies in the Washington, D.C.-Maryland area for which you would be qualified. A canvass has also been made in the Bureau of Labor-Management Reports. This also discloses no suitable vacancies in the Washington Metropolitan area and Maryland.

You are therefore being assigned to the Detroit Area Office on May 6, 1962. Please report for duty on Monday morning May 7, 1962 to the Area Director, Mr. Louis H. Woiwode, 1906 Washington Boulevard Building, 234 State Street, Detroit 26, Michigan.

Attached is a travel authorization covering your personal transportation as well as the movement of your household goods.

[Government Exhibit A — Enclosure No. 2]

To: Mr. Wilfred Handler Date: May 3, 1962
From: John L. Holcombe, Commissioner
[Bureau of Labor-Management Reports, Dept. of Labor]
Subject: Your memo of May 1, 1962 Concerning Change
in Official Duty Station

Mr. Kleiler's memorandum to you of April 23, 1962 advised you of the effective date of your reassignment to Detroit, Michigan.

I am attaching a copy of the Standard Form 50, Notification of Personnel Action, for your reassignment to Detroit, Michigan and a Standard Form 52 documenting the termination of your detail to the Branch of Financial Audits in the Division of Reports.

Your official duty status as of the opening of business on Monday, May 7, 1962, as has been directed, is as a Compliance Officer in the Detroit Area Office, Detroit, Michigan.

If you fail to appear for duty in Detroit, Michigan as assigned, you

will be carried on absence without leave unless you make other arrangements with Mr. Woiwode, Director of the Detroit Area Office, or Mr. John Shinn, Assistant Commissioner for Field Operations.

Mr. Kleiler's memorandum of April 23, 1962 and this memorandum are in conformity with the Secretary of Labor's decision of March 30, 1962 concerning your grievance.

Attachments

[Government Exhibit A. - Enclosure No. 3]

URGENT

MEMORANDUM

May 4, 1962

To: Mr. John L. Holcombe, Commissioner
From: W. Handler, Compliance Officer
Subject: Your Memo of May 3, 1961, re Change in Official Duty Station

I can only assume that you have misunderstood my memo of May 1, 1962.

I refuse to accept reassignment to Detroit, Michigan.

Your termination of my detail to the Branch of Financial Audits makes today my last work-day with that Branch; will you please therefore, before the close of business today, deliver to me written notice of my status as of the opening of business Monday, May 7, 1962.

cc: Mr. John Shinn, Assistant Commissioner for Field Operations

[Government Exhibit A - Enclosure 4]

UNITED STATES GOVERNMENT
MEMORANDUM

Date: May 4, 1962
5:30 PM

To: Mr. Wilfred Handler
From: John C. Shinn
Assistant Commissioner for Field Operations
Subject: Your Memorandum of May 4, 1962 - concerning your status
on May 7, 1962

This will confirm my statement to you on this date in response to your memorandum to me of May 4 in which you request that you be placed in an annual leave status beginning May 7, 1962 since you are refusing to report to the Detroit Office.

The operational needs of the Detroit Area Office are such that your presence is necessary and I am unable to grant annual leave. Accordingly, as you have been previously advised by the Commissioner in his memorandum of May 3, 1962 you will be carried on absence without leave status unless you report to Detroit on May 7, 1962.

[Government Exhibit A - Enclosure No. 5]

MEMORANDUM

May 4, 1962

To: Mr. John Shinn
Assistant Commissioner for Field Operations
From: W. Handler, C.O.
Subject: My status on May 7, 1962

My recent memos to management have clearly indicated that it was my impression that during the "30 day notice period" preceding

my removal for failure to accept reassignment to Detroit, it would be required that I be kept in a duty status in Wash., D.C. Management did nothing to correct my impression.

Mr. Harold Finnegan, of the Office of Personnel Administration, has just advised me that, to retain a duty status during the 30 day period, I would have to be in the Detroit office.

Because I have refused the reassignment to Detroit, and because I cannot report to Detroit, please place me in an Annual Leave status beginning May 7, 1962.

[Government Exhibit A - Enclosure No. 6]

MEMORANDUM

May 4, 1962

To: Mr. Wilfred Handler

From: John L. Holcombe, Commissioner

Subject: Your memorandum of May 4, 1962

The question as to your status at the beginning of business May 7, 1962, is, in my opinion, clearly answered in my memorandum of May 3, 1962.

[Government Exhibit A - Enclosure No. 18]

U.S. DEPARTMENT OF LABOR
Office of Personnel Administration
Washington

July 11, 1962

Mr. Wilfred Handler
P. O. Box 1052
Baltimore 3, Maryland

Dear Mr. Handler:

This is in reply to your memorandum of July 5, 1962, containing questions relative to your having to report to Detroit, Michigan in order to be in duty and pay status.

I personally satisfied myself, that under the circumstances controlling in your situation, you would have to report to Detroit in order to be in pay status. Further, as I pointed out to you in my memorandum of April 2, 1962, if you are absent from duty without authorization, you will be absent without leave.

Sincerely yours,

/s/ Edward J. McVeigh
Director of Personnel

HEFinnegan:hjb

[Government Exhibit A - Enclosure No. 19]

Memorandum — Registered Mail

July 12, 1962

To: Mr. John L. Holcombe, Commissioner, BLMR
Through: Mr. Albert L. Moore, Assistant Commissioner
From: W. Handler, Compliance Officer

Dear Mr. Commissioner:

A brief review of my file of recent correspondence with your office discloses that Mr. Moore and you, respectively, have failed to acknowledge the following two memoranda:

1. My memo of June 12, 1962, to Mr. Albert L. Moore, Jr.
2. My memo of July 5, 1962, to Mr. John L. Holcombe.

I would appreciate immediate answers.

An immediate answer to item #2 would appear especially appropriate; your failure to answer precludes my making an informed decision regarding my resumption of a pay status under the terms you have prescribed.

If you find any gaps in your record of our past correspondence, I will be glad to furnish any data you require.

Respectfully,

/s/ W. Handler

[Government Exhibit A - Enclosure No. 21] ~~Pross McVeigh~~
Mr. Dinnagoe

Memorandum - Registered Mail

July 23, 1962

To: Mr. Edward J. McVeigh - Room 3121

Director of Personnel

From: W. Handler, Compliance Officer W. Handler

In view of the current need for General Investigators in OWPP, and in view of the ostensible spirit and intent of the document you describe as the "Secretary's Decision" of my grievance, I believe you should "see if there are any opportunities to transfer Handler" to OWPP. Enclosed is a carbon copy of a memo I have written to OWPP, attention Mr. Edward J. Moore.

Your letter dated July 11, 1962, but not received by me until July 17, 1962, does not state your rationale or authority for holding that I can be in pay status only if I report to Detroit; thus I cannot make an informed decision.

Enclosed is a check in your name for \$5.00; please use it to register your future mail to me, thus establishing the mailing and receiving dates. The enclosed check will avoid any possible complications stemming from the use of Federal funds for this purpose.

Enclosures: (2)

[Government Exhibit A - Enclosure No. 23]

July 25, 1962

Mr. Wilfred Handler
P.O. Box 1052
Baltimore 3, Maryland

Dear Mr. Handler:

I am returning herewith your personal check for \$5.00 which you enclosed in your letter to me of July 23, 1962; to retain your check would be contrary to our practice.

Very truly yours,

Edward J. McVeigh
Director of Personnel

Enclosure

EM:lw

cc: Mr. Jennings (with memo)

[Government Exhibit A — Enclosure No. 25]

U.S. DEPARTMENT OF LABOR
Bureau of Labor-Management Reports
Washington 25, D.C.

August 1, 1962

REGISTERED MAIL — RETURN RECEIPT REQUESTED

Mr. Wilfred Handler
P. O. Box 1052
Baltimore 3, Maryland

Dear Mr. Handler:

This refers to my letter of June 6, 1962, proposing to remove you from the position of General Investigator GS-12, in the Detroit, Michigan Area Office of the Bureau of Labor-Management Reports of the Department of Labor, on the basis of the charge contained in that letter. You were advised of your right to reply to the charge within ten calendar days after the day you received that letter. The ten calendar day reply period has expired.

After consideration of your memoranda, dated June 12, 1962, June 21, 1962, July 5, 1962, and July 12, 1962, which memoranda were not replies to the charge according to your statement in each one, and after consideration of all available information relating to the charge, it has been found that the charge of failure to accompany your activity to Detroit, Michigan is sustained and therefore that removing you will promote the efficiency of the service. Accordingly, you are hereby notified that you will be removed effective at the close of business August 3, 1962, which is not less than 30 days after the date you received my letter of June 6, on the basis of that charge. Your Notification of Personnel Action, Standard Form 50, for this action is enclosed.

Pending the effective date of removal, you may be in full pay status and in duty status, subject to such assignment as may be considered

appropriate by your supervisor, if you report to your duty station in Detroit, Michigan. If, on the other hand, you choose not to report to your duty station in Detroit, you will continue to be considered absent without leave. You will receive a lump-sum payment for any annual leave time remaining to your credit on the effective date of your removal subject to your return to the Bureau's administrative office of credentials, manuals, transportation requests, books, equipment, and any other property of the United States which is in your possession or has been charged to you as a result of your employment with this Bureau.

This is a notice of adverse decision under the terms of Section 14 of the Veterans' Preference Act of 1944 and Section 22.205 of the Civil Service Regulations. You are hereby notified of your right to appeal this decision not later than ten days after the effective date of removal to the Regional Director, Chicago Region, U.S. Civil Service Commission, Main Post Office Building, Chicago 7, Illinois. Civil Service Regulations require that such an appeal to the Civil Service Commission be in writing and that it set forth your reasons for contesting the removal with offer of proof and such pertinent documents as you are able to submit.

Very truly yours,

/s/ John L. Holcombe
Commissioner

Attachment

NOTIFICATION OF PERSONNEL ACTION
(EMPLOYEE - See General Information on Reverse)

6 PART
50-110

Form 50 - Rev. Dec. 1961
U.S. Civil Service Commission

(For agency use)

NAME (CAPS) LAST-FIRST-MIDDLE HANDLER, WILFRED NMN MR.		MR.-MISS-MRS.	2. (For agency use)	3. BIRTH DATE (Mo, Day, Year) 11-21-16	4. SOCIAL SECURITY NO. 115-07-9839
VETERAN PREFERENCE 1 - NO 3 - 10 PT. DISAB. 2 - 5 PT. 4 - 10 PT. COMP. 5 - 10 PT. OTHER			6. TENURE GROUP I	7. SERVICE COMP. DATE 01-08-42	8. PHYSICAL HANDICAP CODE
REGUL 1 - COVERED 2 - INELIGIBLE 3 - WAIVED			10. RETIREMENT 1 - CS 3 - FS 2 - FICA 4 - NONE 5 - OTHER	11. (For GC use)	
NATURE OF ACTION 6 Removal			13. EFFECTIVE DATE (Mo, Day, Year) 08-03-62	14. CIVIL SERVICE OR OTHER LEGAL AUTHORITY	
FROM: POSITION TITLE AND NUMBER General Investigator L 14428xx			16. PAY PLAN AND OCCUPATION CODE GS-1810	17. GRADE OR LEVEL 12	18. SALARY pa \$9215.00
NAME AND LOCATION OF EMPLOYING OFFICE Bureau of Labor-Management Reports Region III - Chicago, Illinois Detroit, Michigan Area Office Detroit, Michigan					

TO: POSITION TITLE AND NUMBER	21. PAY PLAN AND OCCUPATION CODE	22. GRADE OR LEVEL	23. SALARY
NAME AND LOCATION OF EMPLOYING OFFICE			

DUTY STATION (City - county - State) Detroit, Michigan		26. LOCATION CODE 21-1260-163
APPROPRIATION	28. POSITION OCCUPIED 1 - COMPETITIVE SERVICE 1 2 - EXCEPTED SERVICE	29. APPORTIONED POSITION FROM: TO: STATE 1 - PROVED-1 2 - WAIVED-2

REMARKS: ☐ A. SUBJECT TO COMPLETION OF 1 YEAR PROBATIONARY (OR TRIAL) PERIOD COMMENCING _____

☐ B. SERVICE COUNTING TOWARD CAREER (OR PERMANENT) TENURE FROM _____

NOTATIONS: SHOW REASONS BELOW, AS REQUIRED. CHECK IF APPLICABLE: ☐ C. DURING PROBATION ☐ D. FROM APPOINTMENT OF 6 MONTHS OR LESS

Reason for removal: **Failure to accompany activity to Detroit, Michigan.**

DATE OF APPOINTMENT AFFIDAVIT (Agency only)	34. SIGNATURE (For official use only) AND TITLE William T. McCreary
OFFICE MAINTAINING PERSONNEL FOLDER (For official use only) Office of Personnel Administration Washington 25, D.C.	35. DATE 08-01-62
CODE EMPLOYING DEPARTMENT OR AGENCY 11 U.S. DEPARTMENT OF LABOR	36. OR OF PERSONNEL

[Government Exhibit A — Enclosure No. 30]

APPEAL FROM ADVERSE DECISION

August 11, 1962

Mail address: P. O. Box 1052
Baltimore 3, Maryland

Residence: 3218 Shelburne Road
Baltimore, Md.

Telephone: ROgers 4-3369 (Baltimore)

Chief, Appeals Examining Office
U. S. Civil Service Commission
Washington 25, D.C.

Dear Sir:

In accord with Section 14 of the Veterans' Preference Act of 1944, I hereby appeal from an adverse decision of the Department of Labor. See attached for pertinent data from Standard Form 50 effecting the adverse action.

My reasons for appealing the adverse action include the following:

1. My removal is marred by numerous procedural defects.
2. My transfer to Detroit, and my subsequent Removal for Failure to Accompany Activity, were arbitrary, capricious, and made in bad faith. The evidence to support the allegation is abundant, and involves deliberate violations by the Dept. of Labor of Federal Statutes, of Civil Service Regulations, of Dept. of Labor Regulations.
3. The transfer of me (rather than of someone else) to Detroit, was for political purposes, in violation of the Civil Service Act.

Item #1 above — procedural defects — includes the following:

Defects in "30 day notice" letter:

- (a) My removal was preceded by a notice of less than 30 days.*

- (b) My notice did not allow me 10 days to answer the charge, in violation of Dept. of Labor regulations prescribing 10 days.*
- (c) The charge against me was not sufficiently detailed, and was deliberately misleading.
- (d) The adverse action taken is more severe than that originally proposed.
- (e) The reasons cited for my proposed separation are inappropriate and insufficient to support the adverse action taken.
- (f) My notice of proposed adverse action did not adequately advise me of my status during the notice period — in violation of Dept. of Labor rules.

* My notice letter was materially amended by subsequent letters, but a new notice period and a new period in which to answer the charge was not allowed me. My removal was effected less than 30 days after the final amendment.

Other Procedural Defects:

Department of Labor rules require certain grievance procedures, prior to my transfer to Detroit. But the Department's handling of my grievance, and the ostensible review thereof by the Secretary of Labor, were defective in many ways. Thus my transfer, and my subsequent removal for failure to accompany activity to Detroit, were unlawful.

I herewith appeal also from the fact that I was not kept in a duty-pay status in Washington, between the time I failed to report to Detroit and the time of my removal (i.e., during the notice period). In effect I was suspended; I was advised I would be in a duty-pay status only if I reported to my new duty station in Detroit.

I herewith offer to prove every allegation made above.

My notice of adverse decision advises that I may appeal to the Chicago Region of the Civil Service Commission. But I was employed

in Washington, D.C.; I refused to accept transfer to Detroit; I have had no contact with the Detroit Dept. of Labor office; all records, witnesses etc. are in the Washington area. I request that this appeal be handled by the Washington, D.C. office of the Civil Service Commission. I am, however, mailing a copy of this letter to the Chicago Region in order to be in compliance with instructions contained in my notice of adverse decision.

Very truly yours,

/s/ Wilfred Handler

Attachment

Attachment to Handler Appeal
Standard Form 50 Data

S.F. 50 (Rev. Dec. 1961)

Item #1	Handler, Wilfred NMN Mr.
#5	2
#6	I
#7	01-08-42
#12	Code 346 Removal
#13	08-03-62
#19	Bureau of Labor-Management Reports Region III - Chicago, Illinois Detroit, Michigan Area Office Detroit, Michigan
#25	Detroit, Michigan
#30	(Reason for Removal: (Failure to accompany activity to Detroit, Michigan
#32	(Office of Personnel Administration (Washington, D. C.
#33	U. S. Department of Labor.

[Government Exhibit A — Enclosure No. 35]

U.S. DEPARTMENT OF LABOR
Office of Personnel Administration
Washington

August 29, 1962

Mr. R. B. Bates, Acting Chief
Appeals Examining Office
U. S. Civil Service Commission
Washington 25, D. C.

Dear Mr. Bates:

This is in reply to your letter of August 20, 1962, File XAE:R:B:B:-gdc, relative to the appeal of Wilfred Handler who was removed from the position of General Investigator with the Bureau of Labor-Management Reports, U.S. Department of Labor.

The material requested in your letter is enclosed. If I can be of additional assistance, please call me on code 110, extension 2119.

Sincerely yours,

/s/ Harold E. Finnegan
Acting Chief, Employment Division

[Government Exhibit A - Enclosure No. 37]
[Appellant's Civil Service Commission Hearing Exhibit No. 1]

Memorandum

May 1, 1962

To: Mr. John L. Holcombe, Commissioner
From: W. Handler, Compliance Officer
Subject: Mr Kleiler's Memo to me, dated April 23, 1962, in re:
"Change in Official Duty Station"

The subject-memo makes the following request. "Please report for duty on Monday morning May 7, 1962 to the Area Director, Mr.

Louis H. Woiwode, 1906 Washington Boulevard Building, 234 State Street, Detroit 26, Michigan." I cannot comply.

The subject-memo cites as its authority the "Secretary of Labor's decision of March 30, 1962" concerning my grievance. But the subject-memo does not meet the criterion stated in the last sentence of my Petition For Secretarial Review of my grievance, which reads as follows: "This Petition must give Handler something to which he strongly feels he is entitled: a basis on which he can continue his 20 year Federal career, and at the same time retain his respect for himself and for his employer." I shall therefore continue to consider myself on detail to the Branch of Financial Audits.

This memo has been written in the office, but on annual leave; Mr. John T. Murphy, Chief, Division of Reports, earlier today advised me that my answer to the subject-memo might not be written on official time.

[Government Exhibit A - Enclosure No. 37]
[Appellant's Civil Service Commission Hearing - Exhibit No. 2]

Memorandum

Date: Nov. 1, 1961

To: Mr. W. Handler, Compliance Officer
From: John L. Holcombe, Commissioner
Subject: Attendance at Compliance Officer Training Course
and Grievance Memorandum

This is in answer to your memoranda of October 25 and October 30, 1961. As Deputy Commissioner Kleiler told you on October 27, the Compliance Officer Training Course was scheduled by him to consist of six 6-hour work days during the week of October 23 and six 6-hour work days during the week of October 30. This administrative adjustment in the normal scheduled work week of Compliance Officers results in a

reduction of the total working hours for Compliance Officers during these two weeks. Ordinarily, we do not pay professional employees overtime compensation for work on Saturday, although normally we provide for compensatory time off for such work. Because the time in attendance at the Compliance Officer Training Course amounts to only 36 hours per week, however, Mr. Kleiler told you that we do not plan to provide compensatory time off for attendance at the Saturday sessions.

Upon further consideration of the entire problem, however, you are now advised that Compliance Officers are to be compensated for overtime by compensatory time off. Therefore, as the course is scheduled to meet on two Saturdays, you would be allowed compensatory time for Saturday duty by virtue of attendance at the Training Course.

In answer to your question as to the propriety of scheduling you for attendance at the course, you have been advised of your reassignment to the Detroit Area Office and you know that your physical move to the office has been delayed only pending final decision on your grievance. Your statements made in memoranda that you cannot accept this reassignment do not constitute a formal resignation in lieu of reassignment. Therefore, at least until such time as your petition to the Secretary has been answered, you are a Compliance Officer scheduled for reassignment to the Detroit office. If your appeal to the Secretary is unsuccessful, you will be directed to report to Detroit at a specific time. At that time, you must either report as directed, submit a properly executed Standard Form 52 indicating your resignation, or you will be removed for failure to accept reassignment.

In the event you now wish to submit a SF-52 indicating that you are resigning due to inability to make the physical move to Detroit, we would then have the definite assurance necessary to enable us to relieve you from your assignment to the Compliance Officer Training Course. We are in no way attempting to coerce you into submitting a resignation. You have been repeatedly advised that your budgeted position is in Detroit, the Detroit office is in need of additional help in the form of

another financial investigator and we must keep your Detroit position available until final decision on your grievance. Therefore, unless a resignation SF-52 is executed (with the provision that the resignation would be effective only in the event the Bureau's decision on your grievance was sustained) we must continue in the belief that you are still our employee scheduled for the Detroit office.

In answer to your question as to the difference in the handwriting of initials on memoranda of October 24 and October 25, certain management executives have been delegated the authority to initial memoranda for me in my absence. My initials appearing on any memoranda to you indicate that they come by my authority either direct or delegated.

[Government Exhibit A - Enclosure No. 37]
[Appellant's Civil Service Commission Hearing - Exhibit No. 3]

Memorandum

July 5, 1962

To: Mr. Edward J. McVeigh, Director of Personnel
From: W. Handler, BLMR

This is a 1 page memo. I have signed each page.

Mr. Holcombe's memo to me of June 28, 1962, states:

"The Director of Personnel is the authority for the statement that you can be in a duty and pay status only if you report to Detroit, Michigan."

1. Please advise whether the above is your personal decision, or that of someone with your delegated authority. If the latter, please identify him; have you personally adopted the decision?

2. Please explain the rationale involved in reaching the decision quoted above; please cite Federal Personnel Manual authority.

3. If your authority for the quoted decision is the Civil Service Commission, please identify the individual involved. If you are able,

please cite the rationale offered by the Civil Service Commission as the basis for its opinion.

For your information, there is attached herewith a carbon copy of a 6 page memo from me to Mr. Holcombe, dated July 5, 1962.

Respectfully,

/s/ W. Handler

[Government Exhibit A - Enclosure No. 37]

[Appellant's Civil Service Commission Hearing - Exhibit No. 4]

Memorandum - Registered Mail

July 12, 1962

To: Mr. Edward J. McVeigh, Director of Personnel

From: W. Handler, BLMR

I believe you should answer my memo of July 5, 1962, at once. Until you do, and until Commissioner Holcombe does likewise, I cannot make an informed decision regarding my resumption of a pay status.

My involuntary - and apparently illegal - non-pay status is about to enter its eleventh week.

Respectfully,

/s/ W. Handler

[Government Exhibit A — Enclosure No. 37]

[Appellant's Civil Service Commission Hearing-Exhibit No. 13]

Memorandum

April 25, 1962

To: Mr. Edward J. McVeigh
Director of Personnel

From: W. Handler
Compliance Officer, BLMR

Subject: Secretary's Decision — Grievance.

Regarding the memo to the Secretary from Mr. David S. North, dated February 27, 1962, which you refer to as the Secretary's decision, please furnish, specifically, the following information:

1. In whose writing is the notation: "OK A.J.G. 3/30/62"? (It does not appear to be in the Secretary's hand.) I am not now questioning the apparent delegation of the Secretary's authority; I am merely trying to establish personal responsibility.

2. Please explain the delay between February 27, 1962, when Mr. North's memo was written, and March 30, 1962, when it was approved.

3. I delivered to your office my petition for Secretarial review, which consisted of a brief together with exhibits. In processing my petition, did you forward it, in its entirety, to the Secretary? (Mr. North's memo, which you designate as the Secretary's decision, gives no answers to the points raised in my petition; indeed there is not the slightest indication that Mr. North has read my petition.)

Unless I receive a written reply, on or before April 27, 1962, I will assume that you do not intend to answer this memo. I will thereupon direct my inquiries elsewhere.

At an appropriate time in the future, I might add, I will dissect Mr. North's memo of February 27, 1962 (the Secretary's decision?) in the same manner, and with much the same results, as I dissected your memo to me of November 7, 1961 — see discussion of Exhibit B in my petition for Secretarial review.

[Government Exhibit A — Enclosure No. 37]

[Appellant's Civil Service Commission Hearing-Exhibit No. 17]

Memorandum - Registered Mail

July 17, 1962

To: Mr. David S. North
Office of the Assistant Secretary

From: W. Handler, BLMR
P. O. Box 1052
Baltimore 3, Maryland

Subject: Grievance

(Note: This is a 2 page memo.
I have signed each page.)

On December 13, 1961, I petitioned the Secretary for a review of my grievance. You thereafter ostensibly reviewed my grievance; in your memorandum dated February 27, 1962, to the Secretary, you proposed a Secretarial decision.

I would appreciate your answers to the following questions:

1. Before writing your memo of February 27, 1962, to the Secretary, did you read my Petition for Secretarial Review? (My Petition was handwritten; it consisted of a 2 page table of contents, fifty-two pages of text, and Exhibits A through N.)
2. If your answer to No. 1 above is "no";
 - (a) Why not?
 - (b) Was my Petition included with the Grievance material forwarded by the Office of Personnel Administration to you for your review?
 - (c) Did you see my Petition before writing your memo of February 27 to the Secretary?
 - (d) In your memo of February 27, 1962, to the Secretary, you called my Grievance a long and complicated dispute. Were you aware that my Petition for Secretarial Review condensed and clarified the problem of reviewing this "long and complicated" dispute?; were you

aware that my Petition was not merely a naked request for Secretarial Review?; were you aware that my Petition highlighted and pinpointed the inequities and illegalities that will stem from the Grievance Committee's recommendations and from Commissioner Holcombe's adoption of the recommendations?

3. If your answer to No. 1 on the previous page is "Yes";

In your memorandum of February 27, 1962, proposing a Secretarial decision, why do you fail to acknowledge or answer any of the objections raised in my Petition?

In view of decisions I soon must make, it is essential that your answer, if any, be prompt. Should I fail to receive a written answer on or before July 24, 1962, I shall assume that, in order to avoid embarrassment to yourself and/or to the Department, you do not choose to answer. (My address: P. O. Box 1052, Baltimore 2, Maryland).

[Government Exhibit A — Enclosure No. 37]

[Appellant's Civil Service Commission Hearing-Exhibit No. 16]

Memorandum - Registered Mail

July 23, 1962

To: Mr. David S. North, Room 3101
Office of the Assistant Secretary

From: W. Handler
P. O. Box 1052
Baltimore 3, Maryland

July 24, 1962, is of special interest to me for two reasons:

1. I understand you are to return from a vacation on July 24.
2. In the absence of an answer to my memo to you of July 17, 1962, it was intended that July 24 would mark the end of my expectations of receiving an answer. . .

This is merely one of several interesting coincidences.

An early answer to my memo of July 17, 1962, is still urgently needed. The assumption I stated in my memo of July 17, 1962, will therefore be deferred from July 24 to July 27. If, by a further coincidence, you extend your vacation beyond July 24, my assumption will likewise be deferred until three days after your ultimate return from vacation.

P.S. — In order to establish the mailing and receiving dates, please send your answer by registered mail — your cooperation will be appreciated.

[Government Exhibit A — Enclosure No. 37]

[Appellant's Civil Service Commission Hearing-Exhibit No. 18]

U.S. DEPARTMENT OF LABOR
Office of the Assistant Secretary
Washington

July 26, 1962

Mr. W. Handler
P. O. Box 1052
Baltimore 3, Maryland

Dear Mr. Handler:

I have turned over your letters of July 17 and 23 to Edward J. McVeigh, Director of Personnel for an appropriate reply.

Sincerely yours,

/s/ David S. North
Special Assistant to
Assistant Secretary Reynolds

[Government Exhibit A — Enclosure No. 37]

[Appellant's Civil Service Commission Hearing-Exhibit No. 15]

U.S. DEPARTMENT OF LABOR
Office of Personnel Administration
Washington

August 1, 1962

Mr. Wilfred Handler
P. O. Box 1052
Baltimore 3, Maryland

Dear Mr. Handler:

Mr. North has referred to me your letters to him of July 17 and July 23.

I can assure you that Mr. North had before him all of the materials which had been submitted by you to the Secretary.

In this case, Mr. North served as a staff assistant to the Secretary and is answerable only to the Secretary in the discharge of his assignment.

Very truly yours,

/s/ Edward J. McVeigh
Director of Personnel

[Government Exhibit A — Enclosure No. 37]
[Appellant's Civil Service Commission Hearing-Exhibit No. 14]
Registered Mail

P. O. Box 1052
Baltimore 3, Maryland
September 1, 1962

Mr. David S. North, Room 3101
Office of the Assistant Secretary
Dept. of Labor - Washington 25, D. C.

Dear Mr. North:

In my memos to you of July 17 and July 23, 1962, regarding your recommendations for the Secretarial disposition of my grievance, and regarding my brief which accompanied my petition for Secretarial review, I asked you specific questions regarding your total disregard of my brief.

Obviously, I wrote to you for the specific purpose of getting first-hand answers from you; obviously, the particular questions I asked can be answered only by you; but you chose to refer my memos to Mr. McVeigh to make answer. Thus we can say:

1. You refuse to answer my questions of July 17, 1962, but,
2. You don't have the honesty to say so.
3. You recognize that decency would require that you answer my questions, therefore
4. You attempt to disguise your refusal to answer by referring my questions to Mr. McVeigh.

Mr. McVeigh's subsequent letter to me . . . does two things:

(a) Regarding your complete disregard of my brief and of the questions raised in my appeal to the Secretary, Director of Personnel McVeigh attempts to clear himself and to place the full responsibility on you. Mr. McVeigh informs me that he forwarded on to you all my

material, including the brief that you later ignored. Director of Personnel McVeigh's letter to me states: "I can assure you that Mr. North had before him all of the materials which had been submitted by you (by Handler through McVeigh) to the Secretary."

(b) Mr. McVeigh's letter to me then concludes by confirming your refusal to answer the questions I asked you in my memo of July 17, 1962. Mr. McVeigh advises me that only the Secretary can force you to answer.

In short, you refuse to answer my questions because I cannot enforce my request. There are those, including, apparently, the new Secretary of Labor, who would say that your code of conduct is the law of the jungle, with a relatively thin veneer of civilization. For my authority, from an address delivered some time ago, I quote the then Under Secretary (now Secretary of Labor) W. Willard Wirtz:

"... The point remains, however, that the key element in the effectuation of the national labor policy to eliminate corruption in the labor movement is the voluntary action within the labor movement itself. I think of Lord Moulton's dictum that 'the measure of a civilization is the degree of its obedience to the unenforceable.'"

Sincerely,

/s/ W. Handler
Wilfred Handler

[Government Exhibit A — Enclosure No. 37]

[Appellant's Civil Service Commission Hearing-Exhibit No. 33]

To: Messrs. Handler and Burdette Date: February 21,
From: Albert L. Moore, Jr. 1962
Assistant Commissioner for Management
Subject: Detail to Position of Auditor

It has come to my attention that copies of Standard Forms 52 regarding your details as of last June have not been transmitted to you. I regret this oversight and attach herewith a copy of the appropriate form.

I am also advised that you have questioned the legality of your details in view of the general prohibition against details in excess of six months. In this connection I would point out to you that this prohibition is designed to protect the employee against arbitrary denial of proper classification, grade and salary through improper and extensive details. I know that you are well aware of the circumstances that made your detail necessary and that it was (and is) our administrative judgment that the positions to which you are detailed are the only positions considered appropriate in the light of your primary training and experience qualifications. You will note that the SF 52 states that the action is a "detail pending outcome of grievance . . .". You are also well aware of the prohibition in the Departmental grievance procedure against any personnel action being taken while the grievance is pending.

It appears therefore that short of voluntary acceptance by you of the originally offered reassignment to the field in connection with the decentralization of the function in which you previously served, there is no alternative but that the detail continue in force in accordance with the terms of its initial establishment, the six months limitation notwithstanding. This is our view as well as that of the Office of Personnel Administration of the Department.

[Government Exhibit A — Enclosure No. 37]

[Appellant's Civil Service Commission Hearing-Exhibit No. 42]

U.S. DEPARTMENT OF LABOR
Office of Personnel Administration
Washington

May 15, 1962

To: Mr. Richard P. Burdette
Compliance Officer, BLMR
Wilfred Handler
Compliance Officer, BLMR

From: Edward J. McVeigh
Director of Personnel

Subject: Your Memorandum of May 4, 1962

This is in reply to your memorandum of May 4, 1962, requesting information relative to your details to the position of Auditor, GS-510-12.

1. In my memorandum of April 26, 1962, I denied your request for copies of the Department's communications with the Civil Service Commission. You may, however, review these documents in your official personnel folder.

2. The following information was given to the U.S. Civil Service Commission when the Department requested approval of the extension of your details on April 16, 1962:

(a) In the spring of 1961, your positions of General Investigator, GS-1810-12, had been moved out of Washington and each of you were advised to report for duty in a field office.

(b) You filed grievances which served to stay the reassignment actions until the grievances were resolved.

(c) Other work had to be found for you and you were accordingly detailed to Auditor duties.

(d) Through oversight, the details were permitted to continue beyond six months without the prior approval of the Commission.

(e) It was anticipated the grievances might take until late May or early June to resolve.

3. Your details were recorded on a Request for Personnel Action, SF-52, not on a Notification of Personnel Action, SF-50. You previously have received a copy of the Request for Personnel Action, SF-52, relative to your details.

[Government Exhibit A — Enclosure No. 37]

[Appellant's Civil Service Commission Hearing-Exhibit No. 46]

May 24, 1962

To: Mr. Harold E. Finnegan
Office of Personnel Administration

From: W. Handler

Please mail to me as soon as possible the status of BLMR Compliance Officers Joseph W. Farrell, Arthur Selby, and BLMR employee Anthony Albamonte. Please include position title, number and grade, name and location of employing office or unit, or office or unit to which detailed, etc. Please show status as of June 1, 1961, show any changes since that date, advise me of any changes subsequent to your answer.

/s/ Wilfred Handler

[Government Exhibit A — Enclosure No. 37]

[Appellant's Civil Service Commission Hearing-Exhibit No. 47]

To: Mr. Wilfred Handler Date: June 8, 1962
From: Charles H. Roberts
Subject:

Mr. Finnegan has asked me to reply to your memorandum of May 24, 1962.

Since the Secretary has reviewed the decision on your grievance in accordance with Personnel Instruction No. 6, it does not seem appropriate to give you the information you requested regarding other employees.

[Government Exhibit A — Enclosure No. 38]

U.S. DEPARTMENT OF LABOR
Office of Personnel Administration
Washington

September 18, 1962

Mr. R.B. Bates, Acting Chief
Appeals Examining Office
U.S. Civil Service Commission
Washington 25, D. C.

Dear Mr. Bates:

Reference is made to the appeal filed by Mr. Wilfred Handler, recently separated from a position in the Department of Labor.

At the conclusion of Mr. Handler's hearing, you requested the Department to submit the name of the person who signed "AJG" on the decision of Mr. Handler's grievance. Enclosed is a copy of a memorandum, dated September 12, 1962, from Secretary Arthur J. Goldberg to Mr. David North, which provides the information requested.

This memorandum establishes that the decision was made by the

Secretary. From this it follows that the order of Commissioner Holcombe was valid, and as such, Mr. Handler was obligated either to comply or to pay the penalty for refusal to do so.

* * *

Sincerely yours,

/s/ Edward J. McVeigh
Special Assistant to the Secretary
and Director of Personnel

[Government Exhibit A — Sub-enclosure to Enclosure No. 38]

U.S. DEPARTMENT OF LABOR
Office of the Secretary
Washington

September 12, 1962

MEMORANDUM TO DAVID S. NORTH

It has come to my attention that the approval of your memorandum to me of February 27, 1962 on the subject of the Wilfred Handler grievance - such approval being indicated by "O.K. A.J.G." - has been questioned as not being in my personal handwriting. These initials were written by Mr. Stephen N. Shulman, my Executive Assistant, in my presence and at my direction at that time. I trust this clarifies the situation.

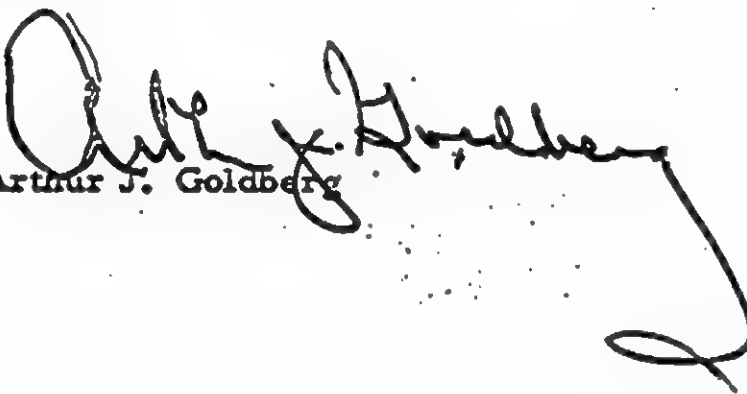
/s/ Arthur J. Goldberg

U. S. DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY
WASHINGTON

September 12, 1962

MEMORANDUM TO DAVID S. NORTH

It has come to my attention that the approval of your memorandum to me of February 27, 1962 on the subject of the Wilfred Handler grievance - such approval being indicated by "O.K. A.J.G." - has been questioned as not being in my personal handwriting. These initials were written by Mr. Stephen N. Shulman, my Executive Assistant, in my presence and at my direction at that time. I trust this clarifies the situation.


Arthur J. Goldberg

[Government Exhibit A — Enclosure No. 40]

[Letter dated Sept. 19, 1962, from appellant to Mr. R. B. Bates,
Appeals Examining Office, Civil Service Commission]

8. For specific procedural defects of the grievance processing see Paragraphs 3(C), 3(C)(1), 3(C)(2), pages 6 through 16 of the Petition, and paragraphs 3(G) and 3(H), pages 19 through 25. Regarding Paragraph 3(G), in a later grievance hearing of another employee (Richard P. Burdette) involving the identical issue, Mr. Finnegan answered the question, saying that Albamonte's then current status was apparently that of illegal detail. The Grievance Committee in that case, in finding for the employee, states that it relied heavily on the fact that Albamonte had been on illegal detail at the time of Burdette's transfer. Albamonte was also on illegal detail at the time of my transfer.

* * *

Query: Why did Mr. North refer my memos to Mr. McVeigh for answer? And at the hearing, why not an affidavit or testimony from Mr. North, rather than Mr. Finnegan's statement that Mr. North told him "yesterday" that he had carefully read the Petition for Secretarial Review?

[Government Exhibit A — Enclosure No. 41]

[Letter dated Sept. 19, 1962, to Mr. R.B. Bates, Appeals Examining Office, Civil Service Commission from Appellant.]

Dear Mr. Bates:

In connection with my appeal and my recent hearing there is submitted herewith the following additional material:

* * *

8. A manila folder containing photostatic reproduction of the Petition for Secretarial Review of the Grievance Decision of Wilfred Hand-

ler, as originally submitted through Director of Personnel McVeigh on December 13, 1961. The folder contains the following:

- (a) A brief, consisting of 2 pages of Table of Contents;
- (b) Exhibits A through N.

[Government Exhibit A — Enclosure No. 41, Sub-enclosure No. 9]

To: Mr. Wilfred Handler Date: April 26, 1962
Bureau of Labor-Management Reports

From: Edward S. McVeigh
Director of Personnel

This is in reply to your memorandum of April 25 regarding the Secretary's decision on your grievance.

1. The memorandum from Mr. North to the Secretary was returned to my office by a member of the Secretary's immediate staff. I believe it to be an authoritative disposition of your request for review of Commissioner Holcombe's decision pursuant to Part III B3 of Personnel Instruction No. 6 and that the notation of approval and the initials thereon were placed there either by the Secretary or a person empowered by him to dispose of the matter. •

2. During the period February 27, 1962, to March 30, 1962, the case was under consideration in the Office of the Secretary.

3. All materials pertaining to your petition for review, including your brief and exhibits, were forwarded to the Secretary by my office.

[Government Exhibit A — Enclosure No. 42]

[Letter dated Sept. 20, 1962, to Mr. R. B. Bates, Appeals Examining Office, Civil Service Commission from Appellant.]

In a 2 page letter to you dated Sept. 19, 1962, I listed 12 items of additional material delivered to your office. Item 8(a) of that letter should be corrected by deleting the semi-colon and adding the following: "and 52 pages of text;"

[Government Exhibit A — Enclosure No. 43]

P. O. Box 1052
Baltimore 3, Maryland
Sept. 26, 1962

Mr. R. B. Bates
Appeals Examining Office
Civil Service Commission

Dear Mr. Bates:

Re: XAE: RBB: gdc

A copy of Mr. McVeigh's letter to you, dated Sept. 18, 1962, together with the two enclosures cited therein, was received by me on September 21, 1962.

* * *

Re The Photostat of Memo dated September 12, 1962,
Arthur J. Goldberg to David North

3. The third paragraph of Mr. McVeigh's letter of September 18, 1962, to you, concedes the following:

(a) If the grievance decision was not made by the Secretary, as required by the Agency's Personnel Instruction No. 6. Commissioner Holcombe's order that I go to Detroit would not be valid, and

(b) If Commissioner Holcombe's order were not valid, I would be under no obligation to comply.

4. A change in an employee's post of duty normally does not require the Secretary's express approval. The necessity for the Secretary's decision in this instance, conceded by the Agency (3(a)), stems from the fact that the Secretary's decision is a part of the prescribed grievance procedures. It follows, then, that the Agency implicitly concedes that the prescribed grievance procedures are a prerequisite to the Commissioner's directive to me that I report for duty in Detroit, a new post of duty. Item #8 of my 8 page letter to you of September 20, 1962, cites several defects in my grievance procedures — if these are in fact grievance defects, it follows from items 3(a) and 3(b) above that Mr. McVeigh would agree that Commissioner Holcombe's directive that I report to Detroit was invalid, and one which I was under no compulsion to obey.

* * *

6. It should be clearly understood that none of the following comments are intended as a reflection upon Secretary Goldberg:

(a) Mr. McVeigh's enclosure (a photostat of the memorandum dated Sept. 12, 1962, from Arthur J. Goldberg to David S. North) is not satisfactory either as evidence to be considered in the Civil Service Commission's consideration of my appeal, or as an authentication of the Secretary's decision in my grievance.

(1) As evidence relied on by the Agency to justify the adverse action, it should be in affidavit form. The memo was obviously written in response to your request of Mr. Harold Finnegan of Mr. McVeigh's office that the Agency furnish the identity of the person who wrote "OK, AJG". Why then, was the memo written to Mr. North?

(2) As part of my grievance decision, the original rather than a photostat of the memo should have been directed to me. Inasmuch as I filed the grievance in question, and inasmuch as I appealed to the Secretary for his decision of my grievance, it appears that it is I who should receive the Secretary's decision. Both the document bearing the controversial "OK, AJG", and the memo to Mr. North establishing that "the decision was made by the Secretary", have been given to me in photo-

static form. As petitions for Secretarial Review of grievances, must be made through the Director of Personnel, I am sending a copy of this letter to Director of Personnel McVeigh, together with a specific request that Mr. McVeigh secure for me, from Mr. North, the original of the Secretary's memo of September 12, 1962. Secretary Goldberg's memo to Mr. North ends with this sentence: "I trust this clarifies the situation." But Mr. North is not concerned with the need for clarifying the situation; Mr. North had nothing to do with my grievance either before, or after, he fulfilled his special assignment to review the grievance record and make a recommendation to the Secretary. The Secretary apparently misunderstood the situation when he directed his memo to Mr. North. Mr. North will therefore have no reluctance to relinquish the original of the memo in question, particularly when he understands it is in fact a part of the Secretarial decision due me.

In short: Mr. McVeigh's letter of September 18, 1962, to you, establishes several reasons for my immediate and retroactive reinstatement; the evidence sought to be introduced via the photostat of a memo from Mr. Goldberg to Mr. North should be in affidavit form; because it is properly part of my grievance decision, I am requesting of Director of Personnel McVeigh that he secure for me the original of Secretary Goldberg's memorandum of September 12, 1962, to David S. North.

Very truly yours,

/s/ Wilfred Handler

[Government Exhibit A — Exhibit No. 45]

P. O. Box 1052
Baltimore 3, Maryland
October 11, 1962

Mr. R. B. Bates
Appeals Examining Office
Civil Service Commission

Re: XAE:RBB:gdc

Dear Mr. Bates:

Enclosed is a photostatic copy of each of the following:

(a) Letter dated September 27, 1962, to Mr. Edward J. McVeigh, Director of Personnel, from W. Handler.

(b) Letter dated October 11, 1962, to Mr. David S. North from W. Handler.

I wrote my letter of September 27, 1962, to Mr. McVeigh, in accord with item 6(a)(2) of my letter to you dated September 26, 1962. Mr. McVeigh has not acknowledged my letter — hence my letter of this date to Mr. North.

I declare under the penalties of perjury that all allegations of fact that I have made to you in writing since my hearing terminated on September 12, 1962, are true to the best of my knowledge and belief. I further certify that all copies of documents I have submitted into evidence during or after the hearing are true copies.

I request that written allegations of fact and copies of documents introduced by the Agency since the hearing (letter to you from Mr. McVeigh, dated September 18, 1962, together with photostatic copy of Memorandum to David S. North from Arthur J. Goldberg) be similarly authenticated, in accord with the Federal Personnel Manual. I request also that Mr. McVeigh be asked to submit into evidence the writings he refers to in the first sentence of the fourth paragraph of his letter to you of September 18, 1962.

Enclosures

Very truly yours,

/s/ Wilfred Handler

[Government Exhibit A — Sub-enclosure to Enclosure No. 45]

P. O. Box 1052
Baltimore 3, Maryland
Sept. 27, 1962

Mr. Edward J. McVeigh
Special Assistant to the Secretary
and Director of Personnel
Dept. of Labor, Wash., D. C.

Registered Mail

Dear Mr. McVeigh:

Enclosed is a photostat of my 7 page letter dated Sept. 26, 1962, to Mr. R. B. Bates of the Appeals Examining Office of the Civil Service Commission. You will note that I discuss therein the memorandum of Sept. 12, 1962, to David S. North from Arthur J. Goldberg. You will note that I consider that Secretary Goldberg's memo to Mr. North is in fact a part of the Secretary's decision of my grievance, and that as such, the original memo should be furnished me. You will note that I explain in my letter to Mr. Bates of September 26, 1962, why I make my request of you, rather than of Mr. North, for the original memo addressed to Mr. North.

If you do not intend to comply with my request, I shall contact Mr. North myself. Therefore, if I do not receive your written reply on or before Oct. 2, 1962, I shall assume that you will make every effort to secure the memo for me, that I therefore need not contact Mr. North myself on this matter, and that I shall receive the memo from you on or before October 5, 1962.

Respectfully yours,
/s/ Wilfred Handler

Enclosure

[Government Exhibit A — Sub-enclosure to Enclosure No. 45]

Registered Mail

P. O. Box 1052
Baltimore 3, Maryland
October 11, 1962

Mr. David S. North, Room 3101
Office of the Assistant Secretary
Dept. of Labor - Wash. 25, D. C.

Dear Mr. North:

Please send me, at once, the original of the memorandum about my grievance decision, addressed to you by Secretary Goldberg on September 12, 1962. I previously made this request of Mr. Edward J. McVeigh, Special Assistant to the Secretary and Director of Personnel — unfortunately, Mr. McVeigh has ignored my request.

I consider that the Secretary's memo of September 12, 1962, to you, is in fact an integral part of the Secretary's decision of my grievance, and that as such, the original memo should be furnished me. The Secretary was obviously misinformed when he addressed his memo of September 12, 1962, to you; any legitimate interest you might have had in my grievance had already ended with your recommendation to the Secretary on February 27, 1962. For further discussion, see the following enclosures: Exhibit A — Photostat of letter dated September 27, 1962, to Mr. Edward J. McVeigh from Wilfred Handler.

Exhibit B — Photostats of pages #4 to 7, inclusive, of letter dated Sept. 26, 1962, to Mr. R. B. Bates, Appeals Examining Office, Civil Service Commission, from Wilfred Handler. (The pertinent material starts at Item #6 at the lower part of page #4.)

Should I fail to receive your answer on or before October 17, 1962, I shall assume that because you deem compliance with my request impolitic (Secretary of Labor Wirtz and Lord Moulton notwithstanding),

and because my request at this time is unenforceable, you choose to ignore my request.

Very truly yours,
/s/ W. Handler

Enclosures: Exhibits A & B

[Government Exhibit A — Enclosure No. 46]

Registered Mail

P. O. Box 1052
Baltimore 3, Maryland
October 15, 1962

Mr. Edward J. McVeigh
Special Assistant to the Secretary
and Director of Personnel
Room 3121, Dept. of Labor
Wash. 25, D. C.

Dear Mr. Special Assistant to the Secretary and Director of Personnel:

In my letter of September 27, 1962, I asked you for the original of the memorandum to Mr. David North from Secretary Goldberg, dated September 12, 1962. Rather than the requested original, your letter of October 8, 1962, transmits to me a "certified true copy" — you offer no explanation for your failure to comply with my request.

A "certified true copy" is not satisfactory for several reasons, which I shall not here enumerate; but I do have proof that material emanating from your office, including material certified to be correct, is in fact unreliable.

I repeat my request that you send me the original of Secretary Goldberg's memorandum of September 12, 1962, to Mr. North. In order

that I may know when to proceed with the next step, if your reply fails to reach me by October 19, 1962, I will assume you do not intend to answer.

Your letter to me, cited in the first paragraph of this letter, although dated October 8 did not reach me until October 12, 1962. This discrepancy in dates is not unusual in mail I receive from you. In order to establish mailing and receiving dates, please register future mail to me; my enclosed check for \$5.00 payable to the Department of Labor will provide the necessary funds. You will recall that I made this same request of you in an earlier letter; may I hope that this time you will comply?

Respectfully yours,

/s/ Wilfred Handler

Enclosure

[Government Exhibit A — Enclosure No. 47]

Registered Mail

P. O. Box 1052
Baltimore 3, Maryland
October 15, 1962

Mr. Frank A. Yeager
Employee - Management Relations Specialist
Room 6135 - Dept. of Labor
Washington 25, D. C.

Dear Mr. Yeager:

I have received a Gen. Form No. 126 (Records Authentication Certificate), dated October 8, 1962, certifying that you have custody of a memorandum dated September 12, 1962, to David S. North from Secretary Arthur J. Goldberg.

1. Is the memorandum in your custody the original document? If not, please explain.
2. On what date, and from whom, did you receive the document?
3. How did the document come to be placed in your custody? Was it requested or volunteered, and by whom?

In order that I may pursue this matter without undue delay, if your reply fails to reach me by October 19, 1962, I shall assume you do not intend to answer.

Very truly yours,
/s/ Wilfred Handler

[Government Exhibit A — Enclosure No. 48]

U.S. DEPARTMENT OF LABOR
Office of the Assistant Secretary
Washington

Oct. 16, 1962

Mr. Wilfred Handler
Box 1052
Baltimore 3, Maryland

Dear Mr. Handler:

I am turning over to Mr. McVeigh, Director of Personnel, your letter of October 11 and I trust that he will handle it in an appropriate manner.

Sincerely,
/s/ David S. North
Special Assistant to
Assistant Secretary Reynolds

[Government Exhibit A — Enclosure No. 49]

U.S. DEPARTMENT OF LABOR
Office of Personnel Administration
Washington

October 18, 1962

Mr. Wilfred Handler
P. O. Box 1052
Baltimore 3, Maryland

Dear Mr. Handler:

Mr. McVeigh has asked me to return your \$5 check, No. 249, payable to the U.S. Department of Labor for mail registration fees, which you enclosed in your October 15, 1962 letter to him.

Regarding the questions you raise in your October 15, 1962, letter to me, I have the original memorandum from Mr. Goldberg. It is in one of the files on your grievance and appeal. These files were given to me, along with several such cases which were transferred to me, by Mr. Finnegan just before I assumed my present assignment on September 24, 1962. The memorandum in question was not specifically requested or volunteered. In fact, I did not know of its existence until your September 27, 1962 letter was received, which caused me to examine the file and locate it.

Sincerely yours,
/s/ Frank A. Yeager
Employee-Management
Relations Specialist

Enclosure

[Government Exhibit A — Enclosure No. 50]

Registered Mail

P. O. Box 1052
Baltimore 3, Maryland
October 22, 1962

Mr. David S. North
Special Assistant to Asst. Sec'y Reynolds
Room 3101
Dept. of Labor - Wash. 25, D. C.

Dear Mr. Special Assistant to Assistant Secretary Reynolds:

On October 18, 1962, I received a letter dated Oct. 16, 1962, which purports to be from you and which reads as follows:

"Dear Mr. Handler:

I am turning over to Mr. McVeigh, Director of Personnel, your letter of October 11 and I trust that he will handle it in an appropriate manner.

Sincerely,

/s/ David S. North
Special Assistant to
Assistant Secretary
Reynolds"

Your ostensible signature, at the foot of the original letter just quoted, appears to be in the handwriting of Gwendolyn Bullock instead of your own. Letters are customarily concluded with the author's signature; my dictionary defines "signature" as follows: "The name of any person, written with his own hand".

Please advise me, therefore, in a writing graced by your signature (as just defined), that you authored the letter quoted above, or that you instructed that it be written and that you adopt it as your own. If, however, the letter was not authored by you, and if it does not say, exactly, everything you would wish to say, please explain how the letter came

to be written, and please send me a corrected letter. Also, regardless of who wrote the letter, please answer the following questions:

1. Did you ever possess the original of the memorandum about my grievance decision, addressed to you by Secretary Goldberg on September 12, 1962?

2. If the answer to No. 1 is "yes":

(a) When, from whom, and how, did you receive it?

(b) Do you still have it?

3. If the answer to No. 2(b) is "no":

(a) To whom did you give it, when, and why?

My time grows short. Should I fail to receive your answer by October 26, 1962, I shall assume: you did dictate the letter cited in the first paragraph of this letter and quoted above; you always sign correspondence so dictated, but you contrived to have Gwendolyn Bullock sign this particular letter because you yourself are ashamed to assume responsibility for it — in short, the letter quoted above is a double evasion, evasion as practiced by a master of the dubious art; it shifts on to Gwendolyn Bullock the onus of further shifting on to Mr. McVeigh your responsibility for answering my letter to you of October 11.

In the absence of a timely reply from you, I shall further assume that you prefer to flout Lord Moulton's dictum rather than answer the three questions enumerated above.

Very truly yours,

/s/ Wilfred Handler

[Government Exhibit A — Enclosure No. 51]

U.S. DEPARTMENT OF LABOR
Office of the Assistant Secretary
Washington

October 23, 1962

Mr. Wilfred Handler
P. O. Box 1052
Baltimore 3, Maryland

Dear Mr. Handler:

My letter of October 16 to you was signed by my secretary, in my absence and at my specific request. I had dictated the letter earlier. I am turning your letter of October 22, over to Mr. McVeigh for handling.

Sincerely,
/s/ David S. North
Special Assistant to
Assistant Secretary Reynolds

[Government Exhibit A — Enclosure No. 52]

Registered Mail

P. O. Box 1052
Baltimore 3, Maryland
November 5, 1962

Mr. David S. North
Special Assistant to Asst. Sec'y. Reynolds
Room 3101, Dept. of Labor
Wash. 25, D. C.

Dear Mr. Special Assistant to Assistant Secretary Reynolds:

Your letter to me, dated October 23, 1962, concludes with: "I am turning your letter of October 22, over to Mr. McVeigh for handling."

Mr. McVeigh, however, has not acknowledged my letter. I am therefore still awaiting answers to the numbered questions in my letter to you of October 22; apparently Mr. McVeigh believes that answers to those questions will incriminate you. Unless you reply at once to this letter, I shall assume that you agree with Mr. McVeigh; you, in turn, will be safe in assuming that I too agree.

Special Assistant to the Secretary and Director of Personnel McVeigh's "handling" of my letter to you of October 22 has proved unsatisfactory. If my letter is to be favored with a sincere answer, obviously you will have to "handle" it yourself. I remind you that you have closed your letters to me with the word "Sincerely". My dictionary defines "sincere" as follows: "straightforward; free from hypocrisy, disguise, or false pretense."

Very truly yours,
/s/ Wilfred Handler

[Government Exhibit A — Enclosure No. 53]

Registered Mail

P. O. Box 1052
Baltimore 3, Maryland
November 12, 1962

Mr. Edward J. McVeigh
Special Assistant to the Secretary
and Director of Personnel
Room 3121, Dept. of Labor
Wash. 25, D. C.

Dear Mr. Special Assistant to the Secretary and Director of Personnel:

On October 15, 1962, I wrote to Mr. Frank A. Yeager of your office, about a Memorandum from Secretary of Labor Arthur J. Goldberg to

Mr. David S. North, dated September 12, 1962. My letter to Mr. Yeager asks the following three questions about that Memorandum:

1. Is the memorandum in custody the original document? If not, please explain.
2. On what date, and from whom did you receive the document?
3. How did the document come to be placed in your custody? Was it requested or volunteered, and by whom?

In a letter dated October 18, 1962, Mr. Yeager answers all three questions. But his answers to the second and third questions are typical of your office; they tell me nothing — Mr. Yeager answers the second and third questions by saying that a file, containing the Secretary's original Memorandum, was transferred from Mr. Finnegan of your office to him (Mr. Yeager, of your office) when Mr. Yeager took over certain duties from Mr. Finnegan.

Mr. Yeager thus either fails to recognize, or chooses to ignore, the obvious purpose of my questions, which is to determine how and when Secretary Goldberg's Memorandum, addressed to Mr. North, came into the possession of your office — transfers within your office are of little interest. With this purpose in mind, please have your Mr. Finnegan, or other appropriate persons (including yourself), answer questions number 2 and 3 above.

Mr. Yeager having already undertaken to answer these questions, your office's recognition of the propriety of my asking them is established. The issue now remaining is: are you willing to meet your obligation of answering them informatively, or are you willing only to "answer" them evasively, as Mr. Yeager has done?

If you and your office should now persist in failing to adequately answer these questions, it will be obvious that your objection is not to the questions, but to informative answers, because they would embarrass and incriminate you and/or your office.

My time is short. If your answer fails to reach me by November 16, 1962, I shall assume you do not intend to answer — I shall then direct my questions elsewhere. In order to establish, for the record, the date your answer is mailed and received, please answer by registered mail — to cover the costs, I enclose a \$2.00 check payable to the U.S. Department of Labor.

Very truly yours,

/s/ Wilfred Handler

Enclosure

[Government Exhibit A — Enclosure No. 54]

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ADMINISTRATIVE
ASSISTANT SECRETARY
Washington

November 23, 1962

Mr. Wilfred Handler
P.O. Box 1052
Baltimore 3, Maryland

Dear Mr. Handler:

I am returning your \$2 check, No. 251, payable to the U.S. Department of Labor for mail registration fees, which was stapled to your November 12, 1962 letter to me.

The September 12, 1962 memorandum to Mr. North from the Secretary was received from Mr. North's office. We do not recall the name of the person who actually delivered the document. The exact date it was received in this office is not a matter of record and is not recalled. It was sometime between September 12, 1962, when it was written, and September 18, 1962, when copies were sent to you and Mr. Bates at the Civil Service Commission. To the best of Mr. Finnegan's memory, the

memorandum in question was received one or two days after September 12.

Mr. Finnegan requested the memorandum in question so as to give Mr. Bates information, you will recall, he requested at the conclusion of your hearing.

Mr. North has forwarded your November 5 and October 22, 1962 letters to him. I believe the pertinent information you requested in these letters is contained in this letter, Mr. Yeager's October 18, 1962 letter to you, and the copy sent you of my September 18, 1962 letter to Mr. Bates.

Sincerely yours,

/s/ EDWARD J. McVEIGH
Assistant Administrative Assistant
Secretary

Enclosure

[Government Exhibit A — Enclosure No. 55]

Registered Mail

P. O. Box 1052
Baltimore 3, Maryland
December 5, 1962

Mr. David S. North
Special Assistant to Ass't. Sec'y. Reynolds
Room 3101 - Dept. of Labor
Washington 25, D.C.

Dear Mr. Special Assistant to Assistant Secretary Reynolds:

In my letter to you of October 22, 1962, I ask questions about the mechanics of your receipt and subsequent disposition of Secretary Goldberg's memorandum to you, dated September 12, 1962. You answer none of the questions; instead, your letter of October 23 states: "I am turning your letter of October 22, over to Mr. McVeigh for handling."

More than a month later, in a letter to me dated November 23, 1962, but not received until November 27, 1962, Assistant Administrative Assistant Secretary McVeigh finally acknowledges, incidentally, that you did in fact forward to him my letter of October 22, 1962. Mr. McVeigh makes no attempt to directly answer the questions in my letter to you of October 22, 1962 — he does purport to believe that the answers can be educed from certain of his correspondence to me.

Assistant Administrative Assistant Secretary McVeigh is in error — the questions in my letter to you of October 22, 1962, remain, for the most part, unanswered. Speaking baldly, rather than ascribing this to error on the part of Mr. McVeigh, it would probably be more accurate to ascribe it to Mr. McVeigh's desire to protect you from incrimination. At any rate, we know now, if we did not know before, that Mr. McVeigh will not answer the numbered questions I put to you in my letter of October 22, 1962.

Specific questions:

A: Will you now specifically answer the numbered questions in my letter of October 22, 1962?

B. How do you justify referring to Mr. McVeigh questions about the factual mechanics of your alleged receipt and subsequent disposition of a memorandum that Secretary Goldberg addressed to you?

C: As Secretary Goldberg ostensibly believed that you — not Mr. McVeigh — were the proper addressee and recipient of his memorandum of September 12, 1962, why do you now believe that Mr. McVeigh — not you — is the proper source of information about the factual mechanics of your receipt and disposition of the Secretary of Labor's memorandum?

If your answer does not reach me by December 12, 1962, or, if your answer states that you are asking Mr. McVeigh to "handle" this letter — I shall assume that you refuse to answer the specific questions in this letter as well as those in my letter of October 22, 1962.

If you do answer this letter, please do so promptly by registered mail — enclosed is one dollar in cash to cover registration fees.

Very truly yours,

/s/ Wilfred Handler

Enclosure

[Government Exhibit A — Enclosure No. 56]

U.S. DEPARTMENT OF LABOR
Office of the Assistant Secretary
Washington

Mr. Wilfred Handler
P. O. Box 1052
Baltimore 3, Maryland

December 6, 1962

Dear Mr. Handler:

I am returning the dollar bill which you sent to me with your letter of December 5.

I have turned your letter of that date over to Mr. McVeigh for handling.

Sincerely,

/s/ David S. North
Special Assistant to
Assistant Secretary Reynolds

[Government Exhibit A — Enclosure No. 58]

UNITED STATES CIVIL SERVICE COMMISSION
[Form DAE 9] WASHINGTON 25, D.C.

Mr. Wilfred Handler
P. O. Box 1052
Baltimore 3, Maryland

Dec. 11, 1962

Dear Mr. Handler:

There is transmitted herewith a copy of my findings and recommendation in the appeal described below:

Appeal of: HANDLER, Wilfred
 Action Appealed: Separation
 Employing Agency: Department of Labor
 Reviewed Under: Section 14 of the Veterans' Preference
 Act of 1944, as amended
 Decision: Agency action sustained

Sincerely yours,

/s/ S. L. Elliott

Chief, Appeals Examining Office

Enclosure 3197

[Government Exhibit A — Enclosure No. 58 cont.]

UNITED STATES CIVIL SERVICE COMMISSION
 APPEALS EXAMINING OFFICE
 WASHINGTON 25, D.C.

Dec. 11, 1962

APPEAL OF WILFRED HANDLER

UNDER SECTION 14 OF THE VETERANS'
PREFERENCE ACT OF 1944, AS AMENDED

Appeal of a removal from the position of General Investigator, GS-1810-12, \$9215 per annum, U.S. Department of Labor, Bureau of Labor-Management Reports, Detroit, Michigan, effective August 3, 1962.

INTRODUCTION

Mr. Handler filed an appeal with the Appeals Examining Office of the Civil Service Commission, Washington, D. C., by letter dated August 11, 1962 appealing his separation for failure to accompany his activity to Detroit, Michigan. He forwarded a copy of the appeal to the Chicago Region of the Civil Service Commission. He stated that he had been

employed in Washington, D.C., and requested that the appeal be processed in Washington, D. C., inasmuch as he had refused to accept his transfer to Detroit.

The appeal was accepted by the Appeals Examining Office and an investigation was conducted. A hearing was held September 10 and 12, 1962. Mr. Handler was present at the hearing with his designated representative, Mr. Isador Deckelman, Attorney at Law, 606 Munsey Building, Baltimore, Maryland. The agency was represented by Mr. Harold E. Finnegan, Assistant Chief of Employment.

ANALYSIS AND FINDINGS

We find that the appellant filed a timely appeal in compliance with the Commission's regulations and that he was entitled to appeal under Section 14 of the Veterans' Preference Act of 1944, as amended.

The reasons for the removal of Mr. Handler are quoted below from the June 6, 1962 letter of proposed adverse action:

"This is to notify you that it is proposed to separate you from the position of General Investigator GS-12, \$9215 per annum, in the Detroit, Michigan Area Office of the Bureau of Labor-Management Reports of the Department of Labor, on the basis of the following charge which is hereby preferred against you as reason for separation in the interest of promoting the efficiency of the service.

"CHARGE: Failure to accompany your activity to Detroit, Michigan.

"SPECIFICATION: In a staff meeting on or about October 10, 1960, Assistant Commissioner Daniel L. O'Connor, informed the Division of Financial Investigations that in the near future the work of the Division would be decentralized out of the national office and added to that of the field offices. This was confirmed and elaborated upon in my Bureau Circular No. 41 issued February 24, 1961.

"As a part of this decentralization, your post of duty was changed to the Area Office, Detroit, Michigan with a reporting date of April 30, 1961. Prior to April 30, 1961, you were placed on annual leave and sick leave at your request and given a later date for reporting to Detroit. This date was stayed on June 7, 1961 when you filed a grievance relative to having your post of duty assigned out of Washington, D. C. After the Secretary affirmed that your post of duty was Detroit, you were directed by a memorandum of April 23, 1962 to report to the Area Director, Detroit, Michigan on May 7, 1962.

"In a memorandum dated May 1, 1962, you stated you would not report to Detroit as directed.

"In my memorandum dated May 3, 1962, I reaffirmed your change in post of duty and enclosed your copy of Notification of Personnel Action, SF-50, and travel authorization. I also told you that failure to report as directed would result in your being carried absent without leave.

"In your memorandum of May 4, 1962, you again stated your refusal to report to Detroit as directed.

"In his reply of May 4, 1962, Mr. John C. Shinn again told you to report to Detroit May 7, 1962 and that failure to do so would result in your being carried as absent without leave.

"You failed to report to the Detroit Area Office on May 7, 1962.

"On May 8, 1962, I wrote you a letter directing that you report immediately to the Detroit Area Office and I pointed out that if you did not comply, I would be forced to propose your removal for failure to report to your assigned duty station.

"As of the writing of this letter, you still have not reported for duty to the Detroit Area Office."

The appellant in his appeal letter questioned whether the reasons for his removal were stated with sufficient specificity and detail for him to understand the reasons for the proposed adverse action and make a reply.

Section 14 of the Veterans' Preference Act requires that the notice of proposed adverse action set forth reasons specifically and in detail for the action proposed.

In the case of Englehardt v. United States, decided July 3, 1953, the U.S. Court of Claims made the following statement with respect to the requirement in Section 14 that the notice contain reasons specifically and in detail:

"The manifest purpose of this provision is to afford the employee a fair opportunity to oppose his removal, and the charges must be considered with the view of determining whether plaintiff was informed of the basis of the proposed action with sufficient particularity to apprise him of allegations he must refute or actions he must justify."

The specific details set forth concerning the charge are (1) that the appellant had been informed that his post of duty had been changed from Washington, D.C., to Detroit, Michigan, (2) that he had been directed to report for duty at Detroit, Michigan, (3) that he had been warned that failure to report would result in a proposal to remove him for failure to report to his assigned duty station, (4) that he had informed the agency that he would not report for duty at Detroit, Michigan and (5) that as of the date of the notice he had not reported for duty to his assigned duty station at Detroit, Michigan.

We find that the June 6, 1962 letter contained all of the specific details that the appellant needed to apprise him of the allegations he must refute or actions he must justify in order to reply to the charges and that the charge is stated with specificity and detail as required by Section 14 of the Veterans' Preference Act.

The June 6, 1962 letter of proposed adverse action informed the

appellant that he could reply to the charge personally or in writing or both. He was told that, if he desired to reply in writing, his reply should be submitted within ten days. He was also told that, if he did not desire to reply in writing but desired to reply personally, or, if he desired to reply in writing and in addition make a personal reply either before or after making a written reply he would be permitted to do so.

By letter dated June 12, 1962, to the agency the appellant discussed the June 6, 1962 letter of proposed adverse action and requested additional information concerning the charge. He did not answer the charge. He stated in his letter that unless he received satisfactory answers to his questions he would assume that the running of the time allowed for his reply would be suspended.

By letter dated June 21, 1962 to the agency the appellant again discussed the June 6, 1962 letter of proposed adverse action and stated that he received the June 6, 1962 letter on June 7, 1962. He stated that the agency's failure to answer the questions contained in his June 12, 1962 letter made it impossible for him to answer the June 6, 1962 letter of proposed adverse action. He further stated that it was mandatory that the agency cancel the June 6, 1962 letter of proposed adverse action.

By letter dated June 28, 1962, the agency furnished answers to the questions asked by the appellant in his letters of June 12, and 21, 1962.

By letter dated July 5, 1962, the appellant informed the agency that he was not replying to the June 6, 1962 letter of proposed adverse action. He stated, however, that the June 6, 1962 letter was inadequate. He further stated that, by its letter of June 28, 1962, the agency had altered its June 6, 1962 letter of proposed adverse action. He stated that the June 6, 1962 letter should be replaced and that he should be allowed another ten days within which to reply. The appellant, in his July 5, 1962 letter made additional demands upon the agency for more information and informed the agency that, if he did not receive the information within three work days, he would assume that the agency would issue a new letter of charges.

By letter of July 12, 1962 the appellant informed the agency that it had failed to answer his letters of June 12 and July 5, 1962.

By letter dated July 18, 1962, the agency replied to the appellant's letters of July 5 and 12, 1962. The agency informed the appellant that the ten day period during which he was allowed to reply to the letter of charges began on June 8, 1962 and ran through June 11, 1962. The agency stated that the calendar count resumed on June 30, 1962 and ran five days through July 4, 1962. The agency stated that inasmuch as only one calendar day was left for the appellant to reply to the charges, it was extending the time in which to reply until three days after his receipt of the July 18, 1962 letter.

By letter dated July 23, 1962, the appellant requested that the agency reassign him to another position as a General Investigator.

By letter dated July 30, 1962, the appellant informed the agency that he was ready, willing and able to work in Washington, D.C., or Silver Spring, Maryland.

By letter dated August 1, 1962, the agency notified the appellant that it had given consideration to his letters of June 12, June 21, July 5 and July 12, 1962 but had found that the charge that he had failed to accompany his activity to Detroit was sustained. The agency further notified the appellant that a decision had been made to remove him effective August 3, 1962. The appellant's removal was effected on August 3, 1962.

The June 6, 1962 letter of proposed adverse action allowed the appellant ten days within which to reply to the charge. The appellant submitted two letters dated June 12 and June 21, 1962 during the ten days following his receipt of the June 6, 1962 letter. He did not, however, answer the charge against him in either of these letters. His next letters were dated July 5 and 12, 1962. He stated in his July 5, 1962 letter that his July 5, 1962 letter was not his answer to the charges. He made no reply to the charge in his July 12, 1962 letter but requested additional information.

When the appellant did not answer the charges by July 18, 1962, the agency wrote to the appellant and informed him that it would not consider that the ten days time allowed him to answer the June 6, 1962 letter had expired and gave him additional time until three days after his receipt of the July 18, 1962 letter within which to reply to the charges. The agency did not issue its decision on the charge until August 1, 1962.

The appellant contends that when the agency replied to his letters of June 12, and 21, 1962 by its letter of June 28, 1962 and his letters of July 5 and 12 by its letter of July 18, 1962 and furnished information he had requested, the agency thereby amended the June 6, 1962 letter of proposed adverse action and that he therefore should be given a new ten day period within which to reply and/or a new thirty day notice of proposed adverse action.

We have reviewed the agency's letters to the appellant dated June 28 and July 18, 1962. We find nothing in either of these letters which amends or alters the charge that the appellant failed to report for duty at his assigned post of Detroit, Michigan. The information contained in these letters is in the nature of answers to questions raised by the appellant concerning matters such as his status during the notice period and the fact that the charge against him would stand unless he assumed his duties in Detroit, Michigan on a non temporary basis.

We find nothing in either the June 28, 1962 letter or the July 18, 1962 letter to the appellant that altered the charge that the appellant failed to report to his assigned post of duty at Detroit, Michigan.

We therefore must dismiss the appellant's contention that the agency altered or amended the charge against him and that he was entitled to a new period within which to answer the charge and/or a new thirty day notice of proposed adverse action.

In view of our above analysis we find that the appellant was allowed more than ten days within which to reply personally and in writing to

the June 6, 1962 letter of charges and that he was given a notice of more than thirty days of the proposed separation.

The record shows that the agency considered the appellant's letters of June 12, June 21, July 5, and July 12, 1962 before arriving at the decision to remove him. The decision letter informed the appellant of the reasons relied upon for the action and told him of his appeal rights to the Commission.

In view of our above analysis, we find that the agency complied with the procedural requirements of the law and the regulations of the Commission in effecting the removal of the appellant.

With regard to the charge that the appellant failed to accompany his activity to Detroit, Michigan as he had been instructed to do by the agency, the agency submitted record information to show that the appellant was reassigned from his position of General Investigator, GS-12, Washington, D.C., to his position of General Investigator, GS-12, Detroit, Michigan, effective April 30, 1961. The reassignment of the appellant was taken under the authority of Section 2.501 of the Civil Service Regulations.

The record further shows that the appellant did not report for duty in Detroit in accordance with his reassignment. Instead, on June 7, 1961, he filed a grievance appeal protesting the reassignment. Upon receipt of the grievance appeal, the agency stayed the date for reporting to Detroit. The grievance committee recommended that the appellant's transfer to Detroit be allowed to proceed, but that the agency's Personnel Office should explore alternative job possibilities which would permit him to retain his residence in Maryland.

The appellant appealed the Grievance Committee decision to the Secretary of the Department of Labor.

On March 30, 1962 the Secretary of Labor approved a decision on the grievance appeal. The decision included a recommendation that certain efforts be made to find a position for the appellant which would

not cause him to live outside the State of Maryland. The Secretary's decision further recommended that if no such position could be found for the appellant within thirty days that he be assigned where he was needed at the end of the thirty day period.

By letter dated April 23, 1962, the appellant was notified that there were no vacancies in Maryland or the Washington, D.C., Metropolitan area to which he could be assigned. The letter further informed the appellant that he was being assigned to the Detroit Area Office on May 6, 1962 and instructed him to report for duty at that office on May 7, 1962.

The record further shows that the appellant did not report to Detroit as directed in the April 23, 1962 letter and since has refused to report to Detroit. By letter dated May 1, 1962 the appellant informed the agency that he could not comply with the order directing him to report to Detroit. By letter to the agency dated May 4, 1962, the appellant wrote: "I refuse to accept reassignment to Detroit, Michigan."

The record further shows that as of the date of the June 6, 1962 letter of proposed adverse action the appellant had not reported for duty at Detroit, Michigan.

In view of the evidence which shows that the appellant did not report for duty at Detroit, Michigan as directed, we find that the charge is sustained.

The appellant contended in his appeal to the Commission that the agency did not follow its own regulations in processing his grievance appeal before the agency. He specifically contended that he was not given a Secretarial review of his grievance as provided by the agency's regulations. In this connection, he pointed out that the final decision in his grievance appeal which was purported to have been approved by Arthur J. Goldberg, Secretary of the Department of Labor, did not contain the signature of Secretary Goldberg but had written across the top of the first page the following: "O.K. A.J.G., 3-30-62."

To resolve the issue as to whether Secretary Goldberg approved the final decision in the appellant's grievance appeal, the agency submitted a letter dated September 12, 1962 signed by Arthur J. Goldberg in which he stated that his approval of the decision which was indicated by "O.K. AJG" was written by Mr. Stephen N. Shulman, his Executive Assistant, in his (Goldberg's) presence and at his direction.

In view of the statement of former Secretary of Labor, Arthur J. Goldberg, we find that the appellant did receive a Secretarial review of his grievance appeal and that his contention that he did not receive such a review must be dismissed.

The appellant also pointed out at the hearing before the Commission that the Notification of Personnel Action, Standard Form 50, dated August 1, 1962 by which he was terminated from his employment showed the nature of the action as "Removal" and the reason for the action as "Failure to accompany activity to Detroit, Michigan".

He also pointed out that the June 6, 1962 letter of proposed adverse action notified him that the agency proposed to "separate" him. In this connection, he contended that by using the term "Removal" instead of "Separation", the agency effected a more severe personnel action than that proposed in the June 6, 1962 letter. In support of this contention, he stated that he believed that by designating the action a "Removal" action he would be denied certain rights under the Commission's separated career employee program which he would be entitled to if the action were designated as a "Separation".

Subsequent to the hearing the agency issued a corrected SF-50 dated September 18, 1962 which shows the nature of the personnel action to be "Separation — Failure to accompany activity to Detroit, Michigan". The September 18, 1962 SF-50 further explains the reasons for the separation as follows:

"In his memorandum of May 1, 1962 to Mr. John L. Holcombe Mr. Handler gave as his reason for refusing to accompany the activity: "But the subject-memo (direct-

ing him to report to Detroit, Michigan) does not meet the criterion stated in the last sentence of my Petition For Secretarial Review of my grievance, which reads as follows: 'This Petition must give Handler something to which he strongly feels he is entitled: a basis on which he can continue his 20 year Federal career, and at the same time retain his respect for himself and for his employer.'

The Commission's regulations provide for certain benefits in the form of assistance for employees who are separated for failure to accompany their activity. The entitlement to these benefits, however, is not determined solely on the basis of the terminology used in the SF-50 to designate the nature of the action but is determined by all of the facts of this case.

The appellant also contends that the agency erred in informing him that he would be continued in a duty and pay status during the advance notice period only if he reported to his duty station.

The June 6, 1962 letter of proposed adverse action informed the appellant that pending the decision in his case he would be retained in full pay status and in a duty status if he reported to his assigned duty station in Detroit, Michigan, but that if he did not report to his duty station he would be carried as being absent without leave unless he requested and was granted leave.

The appellant contends that since the reason for his separation was the fact that he had failed and refused to report to the duty station to which he had been assigned, it was improper for the agency to require him to report for duty in Detroit during the advance notice period. He further contended that he should have been permitted to remain in an active duty status in Washington, D.C., during the notice period.

The Commission's regulations give an agency the authority to determine for itself where its employees are needed and when it will reassign its employees from one duty station to another. In this case

the agency determined that the appellant's services were needed in Detroit, Michigan. It reassigned him to Detroit with a reporting date of April 30, 1961 but stayed the reporting date because of his grievance appeal until May 7, 1962 when the grievance appeal had been reviewed and finally decided by the Secretary of the agency.

Section 14 of the Veterans' Preference Act provides that an employee whose discharge is sought shall have at least thirty (30) days advance written notice of the proposed discharge. The Commission's regulations provide that an employee against whom adverse action is proposed shall be retained in an active duty status during the notice period except under certain circumstances such as when the retention of the employee in an active duty status may result in damage to government property or may be detrimental to the interests of the Government or injurious to the employee, his fellow workers, or the general public.

There is no requirement in the law or the Commission's regulations that an employee be retained in a duty station of his choice or a duty station which he refuses to leave. The fact that the reason for the proposed discharge is that the employee refused to accept a change in assignment does not make it mandatory that the agency permit the employee to remain during the notice period in the duty station he refuses to leave.

In this case, the appellant had been officially assigned to the Detroit Area Office of his agency on April 30, 1961 which was more than a year prior to the date of the June 6, 1962 letter of proposed adverse action. During this time he had refused to report to Detroit and had filed a grievance which he appealed through the agency to the Secretary of the agency.

The grievance appeal was denied and the reassignment of the appellant to Detroit was affirmed. Under these circumstances, we find that, at the time the June 6, 1962 letter was issued to the appellant, his official duty station was Detroit, Michigan and that he was entitled to remain in a duty status in his official duty station but that he was not entitled

to be permitted to be retained in an active duty status in Washington, D.C., where the agency had determined his services were not needed.

The appellant also contended that the action transferring him to Detroit was for purposes of reprisal against him because he filed a grievance appeal. The record shows, however, that the appellant's transfer to Detroit was effected on April 30, 1961. The grievance appeal which was an appeal of reassignment was filed on June 7, 1962. Since the grievance was filed after and as a result of the reassignment action we must dismiss the contention that the reassignment was a reprisal against the appellant because he filed a grievance appeal.

The appellant also referred to several other matters or actions of the agency which he believed constituted petty reprisals against him because he filed his grievance appeal.

As one example he stated he believed that the fact that the agency used the term "Removal" in the SF-50 effecting the termination of his employment instead of the term "Separation" constituted a reprisal against him. The question of whether the appellant's rights were violated by the use of the term "Removal" which was corrected by the use of the term "Separation" has been discussed supra. We have found no violation of the appellant's rights in this regard. In any event, the record has been corrected to show the action as being a "Separation" as preferred by the appellant.

The appellant also pointed to the fact that the agency informed the appellant in the August 1, 1962 decision letter that his appeal rights were to the Chicago Region of the Civil Service Commission which has jurisdiction over Detroit, Michigan. He contended that the action of the agency in informing him that his appeal rights were to Chicago instead of the Appeals Examining Office, Washington, D.C., constituted a reprisal against him for filing his grievance appeal.

We find no evidence that the notification to the appellant that he should appeal to Chicago constituted a reprisal against him or a violation of his rights.

The appellant also alleged that subsequent to the filing of his grievance appeal he was issued a Notification of Personnel Action, SF-50 which contained under the heading "Nature of Action" the following notation: "Detail pending outcome of grievance filed June 7, 1962." The position to which he was detailed was that of Auditor, GS-12. He testified that he did not have enough work to keep him busy on a full time basis during the period of his detail. He also alleged that under these circumstances the agency requested permission of the Civil Service Commission to extend the detail beyond the six months limitation for details. He contended that the detail was illegal and fraudulent.

The record in this case shows that the agency determined that it did not have need for the appellant's services in Washington, D.C., but did have need for his services in Detroit, Michigan. The appellant, however, refused to report to Detroit to the position to which he had been assigned. Instead he filed a grievance appeal. Under the regulations of the agency pertaining to grievance appeals, he was entitled to have his reporting date to Detroit, stayed until he received a final decision on the grievance appeal. This left the agency in a situation in which it had no need for the appellant's services in Washington, D.C. Since the appellant was permitted to remain in Washington at his own request and because he would not follow the direction of the agency to report to Detroit, we find that he is estopped in claiming that he was adversely affected by being retained on detail in a position where the work was not sufficient to keep him busy or that the detail was extended for too long a period of time.

In any event, we further find that the issues of whether he was given sufficient work to keep him busy during the period of the detail and whether it was proper for the agency to extend the detail has no bearing on the issue of whether the charge that he failed to report to Detroit is sustained.

The appellant also alleged that after he filed his grievance appeal he was assigned to attend a training course. He testified that he attended

the course but later found that the agency had some one present to check his attendance. He contended that the checking of his attendance constituted a reprisal against him.

There is no regulation of the Commission which prohibits an agency from checking the attendance of an employee at a training course to which he has been assigned to attend. We find no evidence in the file to indicate that the fact that the agency had the appellant's attendance checked or verified constituted a reprisal against him or a violation of his rights. In any event we find that this issue has no bearing on the question as to whether the charge is sustained.

The appellant also stated that the agency questioned him concerning ten hours of compensatory time which he claimed for having attended the training course which was conducted on two separate Saturdays. He contends that this constituted a reprisal against him for filing a grievance. We find no evidence to support the contention that this could have constituted a reprisal against the appellant for filing a grievance. In any event we find that this issue has no bearing on the charge and does not mitigate the charge that the appellant refused to report to Detroit.

The appellant also referred to a letter he received on the day he filed his grievance in which he was requested to furnish a medical certificate in support of certain sick leave he had taken. He contended that the agency's request that he support his sick leave with a medical certificate constituted a reprisal against him for filing his grievance. The Commission's regulations provide that each agency is responsible for approving or disapproving leave. It is customary for an agency to request that an employee submit a doctor's statement in support of sick leave. We find no violation of the appellant's rights with regard to the agency's request that the appellant support his sick leave with a doctor's statement.

The appellant also referred to a memorandum dated March 12, 1962 to Mr. Albert L. Moore, Jr. from Mr. Kenneth Douty concerning

his and Mr. Richard P. Burdette's performance ratings. The memorandum reads as follows:

"Through inadvertence Messrs. Burdette and Handler were not orally notified of their performance rating for the 12-month period ending December 31, 1961. This confusion resulted because of their detail status from the Office of Compliance and Enforcement to the Division of Reports of this office.

"Mr. Arnold Johnson, Chief of the Branch of Financial Audits, today advised Handler and Burdette that their performance would have to be considered satisfactory."

The appellant took exception to the language used in the last paragraph of the memo that their performance would have to be considered satisfactory. He contends that the use of the language that "their performance would have to be considered satisfactory" implied that their performance was not, in fact, satisfactory.

The record shows that as a result of the appellant's objection to the language contained in the memorandum the agency ordered that the memorandum be destroyed and replaced by one that did not contain the language objected to by the appellant.

In view of the agency's action in destroying the March 12, 1962 performance rating memorandum and replacing it with one that does not contain the language objected to by the appellant, we find no evidence that this memorandum constituted the reprisal against the appellant for filing his grievance appeal.

The appellant also contended that the removal action itself was a reprisal against him for filing his grievance. The record shows, however, that as late as June 28, 1962, which was after the appellant's grievance appeal was finally concluded by the decision of the Secretary of the agency and after the June 6, 1962 letter of proposed adverse action was issued, the agency informed the appellant that "The charge against you will stand unless you assume your duties in Detroit, Michigan on a non-temporary basis."

Under the terms of the letter the appellant could have reported to his assigned duty station in Detroit and the charges would have been dismissed. Thus it appears that the separation action was not taken as a reprisal against the appellant for filing his grievance appeal but was taken because he refused to accompany his activity to Detroit, Michigan as proposed in the June 6, 1962 letter of proposed adverse action.

The basic charge in this case is that the appellant refused to accompany his activity to Detroit. He admits the charge. His defense is based largely upon his allegations that, after he filed a grievance appeal protesting his reassignment to Detroit, the agency took several petty reprisal actions against him. We have found that the evidence does not support the contention that the actions referred to were reprisals as alleged by the appellant.

The appellant testified at the hearing that, following the Secretary's decision on his grievance appeal, the agency canvassed the Washington area for jobs to which he might be assigned but found no openings. He further testified that at the time a Mr. Anthony Albamonte, occupied a position of Investigator for which he (Albamonte) was not qualified. The appellant contended that, since Mr. Albamonte was not qualified for the job of Investigator, that the agency should have assigned him (the appellant) to Mr. Albamonte's job. He further contended that the failure of the agency to offer him Mr. Albamonte's job indicated bad faith on the part of the agency in carrying out the recommendation of the Secretary on his grievance appeal.

The recommendation of the Secretary on the appellant's grievance appeal provided that the Director of Personnel shall contact all bureaus using financial investigators to see if there were any opportunities for the appellant. The Secretary's recommendation further provided that the decision to transfer the appellant, or not to do so, as reported by

the Director of Personnel, shall constitute part of the Secretary's decision.

The record shows that the Director of Personnel found no positions within the other bureaus of the agency to which the appellant could be assigned. By the terms of the Secretary's recommendation, the determination of the Director of Personnel was not subject to further review. With regard to the question of whether the appellant was entitled to assignment to the position occupied by Mr. Albamonte, the record shows that the Director of Personnel did not consider Mr. Albamonte's position as being an appropriate position for the appellant. By the terms of the Secretary's recommendation the decision of the Personnel Director in this regard constituted a part of the Secretary's recommendation on the grievance appeal and was not subject to further review.

The Commission does not sit as a court of error for agency grievance matters or appeal. We therefore may not review the final decision of the agency on the appellant's grievance appeal. (A part of which decision was the determination by the Director of Personnel that there was no position in the Washington, D.C., area which was appropriate for the appellant to be assigned).

The appellant also alleged that his separation was motivated by political discrimination. Upon receipt of his allegation concerning political discrimination, the Commission wrote to him and informed him that it was the practice of the Commission to require that allegations alleging political discrimination be submitted in affidavit form.

The appellant submitted an affidavit dated August 28, 1962 in which he alleges that another employee of the agency, later identified as Mr. Joseph W. Farrell, was hired by the agency in February, 1960 because of Congressional intervention. He also alleges that this employee was scheduled to be transferred to Detroit but that the employee consulted a Congressman who contacted one of the Commissioners and the Secretary of the agency. He further alleges that the agency thereafter decided

to retain the employee in Washington, D.C. He also alleges that he is better qualified than the other employee.

At the hearing before the Commission the appellant testified that he did not know the political affiliation of Mr. Joseph W. Farrell. He also testified that he was not contending that he (the appellant) was separated because of his political affiliation. He pointed out that he was basing his allegation of political discrimination on the fact that a Congressman interceded in behalf of another employee and his belief that this was the reason the other employee was hired and retained in Washington, D.C.

We find nothing in the August 28, 1962 affidavit of the appellant to support an allegation that separation action taken in his case was motivated by partisan political discrimination. The fact that a Congressman may have contacted one or more agency officials in behalf of another employee does not constitute evidence that the appellant was separated as a result of political discrimination; we therefore must dismiss this allegation.

The appellant also contends that the reasons given for his removal are not sufficient to warrant the action taken and that his separation for the reasons given was arbitrary and capricious.

The action reassigning the appellant to Detroit, Michigan was taken pursuant to the provisions of Section 2.501 of the Commission's regulations which give to each agency the authority to reassign its employees as it determines necessary.

The Commission has consistently held that an agency has the authority to reassign its employees to different duty stations and that failure or refusal to accept a change in assignment is grounds for separation. We find that reasons such as those given for the appellant's removal are sufficient to warrant separation action and that separation under these circumstances is not arbitrary or capricious.

In summary, we have found that the charge that the appellant failed to accompany his activity to Detroit, Michigan is sustained. We have

further found that the agency observed the required procedures in accomplishing the separation action and that the appellant has not established a case that any of his rights have been violated in connection with his separation.

In light of all the evidence and the foregoing analysis we find that the personnel action of the Department of Labor in effecting the removal of Mr. Handler was warranted and was for such cause as will promote the efficiency of the service as prescribed by Section 14 of the Veterans' Preference Act of 1944, as amended, and that such action was not arbitrary, unreasonable or capricious.

RECOMMENDATION

It is recommended that no change be made in the personnel action of the Department of Labor in effecting the removal of Mr. Handler on August 3, 1962.

This recommendation becomes a final decision of the Civil Service Commission unless either the appellant or the employing agency files an appeal with the Board of Appeals and Review, U.S. Civil Service Commission, Washington 25, D.C., within seven (7) days of receipt of this recommendation.

Section 22.501(c) of the Commission's regulations provides that such an appeal must be filed in writing setting forth the basis for the appeal.

Since there is no further right to a hearing, additional representations (if any) should be made in writing and submitted in duplicate with the appeal to the Board.

/s/ S. L. Elliott

Chief Appeals Examining Office

[Government Exhibit A — Enclosure No. 59]

Certified Mail

P. O. Box 1052
Baltimore 3, Maryland
December 19, 1962

Board of Appeals and Review
U. S. Civil Service Commission
Washington 25, D. C.

Re: XAE:RBB:gdc; Dec. 11, 1962

Gentlemen:

This is an 8 page letter; I have signed each page with a fountain pen.

The decision of the Appeals Examining Office is erroneous beyond belief. It is essential, therefore, to establish conclusively the physical identity of the decision, lest it later be rejected in disbelief. Accordingly, included in the photostats enclosed, are the following 16 pages:

1 page: Form DAE 9, signed by Mr. S. L. Elliott, and dated Dec. 11, 1962, transmitting my decision.

15 pages: Mr. Elliott's findings and recommendation in my appeal, dated December 11, 1962.

I certify under the penalties of perjury that these 16 pages are true copies of all the pages making up Mr. Elliott's decision, as received by me. I have also certified as true copies and signed (with a fountain pen) each of these 16 pages.

I herewith appeal from Mr. Elliott's decision. The basis for my appeal is as follows:

1. In effecting my removal, the Department of Labor acted in bad faith.
2. My removal from the Department of Labor was not effected in the prescribed way.

3. The handling of my appeal by the Civil Service Commission Appeals Examining Office was procedurally defective.
4. The decision of Appeal's Examining Office, sustaining the Agency's action, is so erroneous as to impute bad faith.
5. In essential parts, the decision of the Appeals Examining Office is incomprehensible — I do not understand it.

In every issue discussed therein (some are omitted), the decision of the Appeals Examining Office adversely affects me in one or more of the following ways: the statement of "facts" not warranted by the record, the omission of essential facts, the distortion of facts, the omission of my major argument, the misstatement of my major argument — to the point of exactly reversing it, the inclusion of irrelevant material obviously calculated to mislead and intimidate me.

I can't help wondering whether the flagrant bad faith evidenced by the Appeals Examining Office of the Civil Service Commission exemplifies the Commission as a whole. For this reason; and because of the 7 days (inadequate to begin with) during which this appeal had to be prepared, I was sick 4 days; and most importantly, because the decision of the Appeals Examining Office simply does not merit serious consideration; I do not herewith attempt to enumerate or discuss my countless specific objections to the decision from which I am appealing.

I should, however, like to call attention briefly to item #5 listed on page 2 of this letter — my inability to understand the decision. By sometimes referring to the adverse action against me as a "removal", at other times referring to it as a "separation," the Appeals Examining Office has (apparently deliberately) made its decision incomprehensible at worst, equivocal at best. ("Separation" as used in the Federal Personnel Manual covers every action resulting in the loss of an employee to an agency, from death or retirement to removal for murdering a fellow employee!) For example:

(a) Form XAE 18, dated Aug. 29, 1962, advising me the scheduled time for my hearing, reads in pertinent part as follows: "Action appealed: Removal".

(b) Form DAE 9, dated Dec. 11, 1962, transmitting the decision of the Appeals Examining Office, reads in part as follows: "Action Appealed: Separation".

(c) Page 1 of the decision reads in the first paragraph: "Appeal of a removal . . ."

(d) In the very next paragraph, the decision reads: "Mr. Handler filed an appeal . . . appealing his separation for failure to accompany his activity to Detroit, Michigan."

The "removal-separation" list, if completed, would be lengthy. Because my appeal is based in part on the contention that the wrong separation action was effected, and because the word "separation" used by itself is a catch-all for all terminations of employment ranging from death or retirement to removal for murdering a fellow employee, I request that in each instance in the decision of the Appeals Examining Office where "separation" appears, it be replaced with a word denoting a specific kind of separation action.

This replacement is especially needed in the last sentence of the fifth complete paragraph on page 14 of the decision, which reads: "We find that reasons such as those given for the appellant's removal are sufficient to warrant separation action and that separation under these circumstances is not arbitrary or capricious." I do not understand this sentence.

Regarding item #3 on page 2 of this letter (procedural defects in the Appeals Examining Office): I note here, briefly, three of these defects, which are not as obvious as the other faults:

(a) Page 1 of the decision reads in part as follows: "The appeal was accepted by the Appeals Examining Office and an investigation was conducted." An "investigation", in an acceptable sense of the word, was not conducted. I respectfully request that I be advised whether a Civil

Service Commission Investigator conducted the investigation — if so, please identify him. Please furnish information giving the dates and the nature of the investigation.

(b) The Appeals Examining Office did not grant me the required personal hearing. Appeals Examiner Robert B. Bates heard my personal presentation. But Mr. Bates stated that his only function was to create a record for someone else to consider in reaching a decision.

(c) On page 7 of his decision Mr. S. L. Elliott, Chief, Appeals Examining Office, gives great weight to a photostat of a memorandum ostensibly signed by Secretary of Labor Arthur J. Goldberg. Under the circumstances, the memorandum should have been given no weight since it was not in affidavit form. The memorandum submitted by the Agency (Special Assistant to the Secretary and Director of Personnel Edward J. McVeigh) is not even a certified true copy — it should not have been considered by Mr. S. L. Elliott in reaching his decision.

The last time I was permitted to inspect the Commission's file of my case (Nov. 23, 1962), the letters (together with their enclosures) listed immediately below were included in the file — but Mr. S. L. Elliott apparently failed to consider them in reaching his decision. Please confirm that the following are a part of the file:

Letter dated Aug. 29, 1962, to Mr. Bates from Handler (3 pages).

Letter dated Sept. 19, 1962, to Mr. Bates from Handler (2 pages).

Letter dated Sept. 19, 1962 to Mr. Bates from Handler (8 pages).

Letter dated Sept. 20, 1962 to Mr. Bates from Handler (1 page).

Letter dated Sept. 26, 1962 to Mr. Bates from Handler (7 pages).

Letter dated Oct. 11, 1962 to Mr. Bates from Handler (2 pages).

There is enclosed herewith, in addition to the photostats noted at the beginning of this letter, the following photostats, each page of which is certified a true copy — certification made with fountain pen:

Letter dated Octo 8, 1962, to Handler from Special Assistant to the

Secretary and Director of Personnel Edward J. McVeigh (1 page).
 Letter dated Oct. 15, 1962, to Mr. McVeigh from Handler (2 pages).
 Letter dated Oct. 15, 1962, to Mr. Yeager from Handler (2 pages).
 Letter dated Oct. 16, 1962, to Handler from Mr. North (1 page).
 Letter dated Oct. 18, 1962, to Handler from Mr. Yeager (1 page).
 Letter dated Oct. 22, 1962, to Mr. North from Handler (3 pages).
 Letter dated Oct. 23, 1962, to Handler from Mr. North (1 page).
 Letter dated Nov. 5, 1962, to Mr. North from Handler (2 pages).
 Letter dated Nov. 12, 1962, to Mr. McVeigh from Handler (3 pages).
 Letter dated Nov. 23, 1962, to Handler from Mr. McVeigh (1 page).
 Letter dated Dec. 5, 1962, to Mr. North from Handler (3 pages).
 Letter dated Dec. 6, 1962, to Handler from Mr. North (1 page).

I have received no communication from Messrs. North or McVeigh since December 6, 1962.

There is enclosed herewith, in addition to the photostats already listed, the following photostats, each page of which is certified a true copy — certification made with fountain pen:

Letter dated June 24, 1962, to the Secretary (of Labor) from Handler and Burdette (6 pages).
 Letter dated June 29, 1962, to Handler and Burdette, from Mr. Stephen N. Shulman (1 page).
 Letter dated July 10, 1962, to Mr. Shulman from Handler and Burdette (2 pages).

You will note that the decision of the Chief, Appeals Examining Office (Mr. S. L. Elliott) states that Mr. Shulman, at the direction of the Secretary on 30 March 1962 approved my grievance decision in the Department of Labor. You will note also that in the letter listed above, dated June 24, 1962, to the Secretary (answered by Mr. Shulman), I tell the Secretary (Mr. Shulman) that my brief accompanying my appeal to the Secretary has not been acknowledged — that the questions I raised on appeal to the Secretary have not been answered or acknowledged. Mr.

Shulman's letter of June 29, 1962, listed in the paragraph above, is the only acknowledgement made to date of the letter of 24 June 1962 to the Secretary of Labor. Mr. Shulman has not answered the letter of 10 July 1962.

Can a man work for the Federal Government and retain his self respect? The answer I have been given by the Department of Labor, and the answer I have been given by the Appeals Examining Office of the Civil Service Commission is "No!"

What is your answer?

Very truly yours,

/s/ Wilfred Handler

Enclosures

[Government Exhibit A — Enclosure No. 60]

Registered Mail

P. O. Box 1052
Baltimore 3, Maryland
2-12-63

Mr. S. L. Elliott, Chief
Appeals Examining Office
Civil Service Commission
Washington 25, D. C.

Re: Wilfred Handler Appeal.

Dear Sir:

Enclosed is a carbon copy of my 2 page letter of this date to the Board of Appeals and Review about your alleged decision of my appeal.

Please send me, at once, the photostat (certified true copy) and the information specified on page 2 of the enclosure.

Very truly yours,
/s/ Wilfred Handler

Enclosure

[Government Exhibit A — Sub-enclosure to Enclosure No. 60]

Registered Mail

P. O. Box 1052
Baltimore 3, Maryland
2-12-63

Board of Appeals and Review
U. S. Civil Service Commission
Washington 25, D. C.

Re: BAR:ELK Jan. 8, 1963
Wilfred Handler - Dept. of Labor

Gentlemen:

After filing with your office my appeal from the decision of the Chief, Appeals Examining Office, I learned of facts that raise grave doubts about the authenticity of that decision. Specifically — there is doubt that the decision is actually that of Mr. S. L. Elliott, Chief, Appeals Examining Office.

The enclosures that accompanied my appeal of December 19, 1962, to your office included photostats of the following:

- (A) "1 page: Form DAE 9, signed by Mr. S. L. Elliott, and dated Dec. 11, 1962, transmitting my decision."
- (B) "15 pages: Mr. Elliott's findings and recommendation in my appeal, dated December 11, 1962."

You will note that the signature page of item (B) immediately above is not signed. You will note that item (A) above bears the ostensible

signature of Mr. S. L. Elliott, Chief, Appeals Examining Office. But since receiving "Mr. Elliott's" decision, I have learned that the "signature" on item (A) above was evidently not written by Mr. Elliott.

Thus, as received by me, Mr. Elliott's purported decision of my appeal apparently lacks the authentication of his signature. I am therefore asking Mr. Elliott to send me, at once, a photostat (certified true copy) of the original "signed" signature page of his decision, together with the following information about both the "signature" therein and about the "signature" on item (A) listed on page one of the letter.

1. Did Mr. Elliott write the "signature"?
2. If not; (a) Who wrote it, and with what authority?

(b) Is this the usual procedure with decisions of the Appeals Examining Office?; is this the usual procedure with Form DAE 9?

I shall send you copies of Mr. Elliott's answer to my request. If Mr. Elliott's office transmits any material or information directly to you, please advise me and please send me copies.

This is a two page letter. I have signed each page with a fountain pen.

Very truly yours,

/s/ Wilfred Handler

[Government Exhibit A — Enclosure No. 65]

UNITED STATES CIVIL SERVICE COMMISSION
WASHINGTON 25, D.C.

In Reply Please Refer to
BAR:JWH:IS:plb

June 4, 1963

Mr. Wilfred Handler
P. O. Box 1052
Baltimore 3, Maryland

Dear Mr. Handler:

This refers to your further appeal from the decision of the Commission's Appeals Examining Office sustaining, under Section 14 of the Veterans' Preference Act of 1944, the action of the Department of Labor whereby your name was removed from its employment rolls, effective August 3, 1962, on a charge of failure to accompany your activity to Detroit, Michigan.

The Board of Appeals and Review has fully reviewed the entire appellate record in your case, including all representations on your behalf and the representations on behalf of the Department of Labor. The Board considers much of the evidence and many of the representations in the record to be irrelevant or immaterial with respect to the issues properly for Commission resolution in the adjudication of your appeal under Section 14 of the Veterans' Preference Act of 1944.

The Board finds the following essential facts to be established on the basis of the evidence of record: (1) You are entitled to preference under Section 2 of the Veterans' Preference Act of 1944; (2) You were given a career appointment by transfer, effective June 26, 1960, to a position of General Investigator GS-12 in the Bureau of Labor-Management Reports with duty station in Washington, D.C.; (3) Your duty station as General Investigator GS-12 was officially changed, effective May 6, 1962, from Washington, D.C., to Detroit, Michigan; (4) By official

memorandum under date of April 23, 1962, you were informed of the change in your official duty station and were instructed to report for duty at the Detroit Area Office on the morning of May 7, 1962; (5) In a memorandum under date of May 1, 1962, you informed Commissioner Holcombe of your intention not to comply with the official instructions that you report for duty at the Detroit Area Office on the morning of May 7, 1962; (6) By official memoranda under dates of May 3, 1962 and May 4, 1962, you were informed that if you failed to report in Detroit as directed you would be absent without leave; (7) You did not report for duty at the Detroit Area Office on the morning of May 7, 1962, nor at any time thereafter; (8) By letter under date of May 8, 1962, you were informed by Commissioner Holcombe that unless you reported to Detroit immediately he would propose your removal for failure to report to your assigned duty station; (9) By letter under date of June 6, 1962, Commissioner Holcombe notified you that, in the interest of promoting the efficiency of the service, it was proposed to separate you from the position of General Investigator GS-12 in the Detroit Area Office on a charge of failure to accompany your activity to Detroit, Michigan; (10) By letter under date of August 1, 1962, Commissioner Holcombe notified you that the charge of failure to accompany your activity to Detroit, Michigan, was sustained and that you would be removed effective at the close of business August 3, 1962; (11) On August 1, 1962, an official notification of personnel action was executed showing your removal, effective August 3, 1962, from your assigned position of General Investigator GS-12 in the Bureau of Labor-Management Reports at Detroit, Michigan, by reason of your failure to accompany activity to Detroit, Michigan; (12) By letter under date of August 11, 1962, you made an appeal to the Commission's Appeals Examining Office from the Department of Labor's adverse decision of August 1, 1962, and you requested that your appeal be handled by the Appeals Examining Office in Washington, D. C., rather than by the Commission's Chicago Regional Office

which would ordinarily have made the initial adjudication; (13) In accordance with your request, the Appeals Examining Office accepted your appeal for initial adjudication, and you, accompanied by your designated representative, Isadore Deckelman, Esq., appeared at a hearing on your appeal conducted on September 10, 1962, and September 12, 1962, before an appeals examiner of the Commission's Appeals Examining Office; (14) As a result of certain contentions made by you in the course of the hearing on your appeal, the Department of Labor, on September 18, 1962, executed an official notification of personnel action correcting the earlier notification of August 1, 1962, to show the nature of action as "Separation--Failure to accompany activity to Detroit, Michigan" instead of "Removal" and to add, "In his memorandum of May 1, 1962, to Mr. John L. Holcombe Mr. Handler gave as his reason for refusing to accompany his activity: 'But the subject-memo (directing him to report to Detroit, Michigan) does not meet the criterion stated in the last sentence of my Petition for Secretarial Review of my grievance, which reads as follows: 'This Petition must give Handler something to which he strongly feels he is entitled: a basis on which he can continue his 20 year Federal career, and at the same time retain his respect for himself and his employer.'" No other job offer made," as remarks; (15) The decision of the Appeals Examining Office on your appeal was issued on December 11, 1962; and (16) Your further appeal was received by the Board of Appeals and Review on December 20, 1962.

In view of the foregoing findings of fact, the Board concludes that the action of the Department of Labor removing your name from its employment rolls, effective August 3, 1962, was a discharge within the purview of Section 14 of the Veterans' Preference Act of 1944 and that the Commission has authority for appellate review of your discharge under that provision of law. Since, having received an initial Commission appellate decision, you then made a timely further appeal to this Board, the Board concludes that it has jurisdiction to adjudicate, on behalf of the Commission, your further appeal with respect to your discharge by the

Department of Labor. In the adjudication of an appeal from a discharge under Section 14 of the Veterans' Preference Act of 1944, the Commission's authority and responsibility is to determine whether the employing agency accomplished the discharge in accordance with the procedural requirements of the law and regulations, to determine whether the employing agency's reasons for the discharge are sustained by the evidence, and to determine whether, on the basis of the sustained reasons, the discharge was for such cause as would promote the efficiency of the service. Since the circumstances in your case make clear that you were in fact discharged, the standard terminology, whether "Removal" or "Separation--Failure to accompany activity to Detroit, Michigan," used for reporting your discharge on the official notification of personnel action is found by the Board to be inconsequential to the determinations necessary for the proper adjudication of your appeal under Section 14.

With respect to the procedural requirements for accomplishing a discharge, a preference eligible is entitled to 30-days' advance written notice stating any and all reasons, specifically and in detail, for the proposed discharge; he is entitled to a reasonable time for answering the same personally and in writing and for furnishing affidavits in support of his answer; his answer, if any, must be considered in reaching the decision on the proposed discharge; and he is entitled to a written notice of decision stating the reasons for the action taken and informing him of his right of appeal to the Commission. In your case, the record shows that you received the advance written notice of June 6, 1962, on June 7, 1962, which was substantially more than thirty days before August 3, 1962. The record also shows that the reasons for your proposed discharge were set forth in the notice of June 6, 1962, with ample specificity and detail for you to understand the allegations you should refute or the actions you should justify. You were initially allowed a period of ten days in which to make an answer in writing, which period was subsequently extended until three days after your receipt of a memorandum

from Mr. Holcombe under date of July 18, 1962. You were informed of how to exercise your right to make a personal reply, but you chose not to do so. Your written replies of June 12, 1962, June 21, 1962, July 5, 1962, and July 12, 1962, though you characterized them as not being answers to the charge against you, nevertheless received consideration by the appropriate administrative official in reaching his decision to discharge you. You were informed of that decision in a letter under date of August 1, 1962, which set forth the reasons for the decision and your right of appeal to the Commission. Further, the reasons relied upon for your discharge were the same reasons as had been set forth with particularity in the advance written notice of June 6, 1962. In view of the foregoing, the Board agrees with the conclusion of the Appeals Examining Office that the Department of Labor complied with the procedural requirements of the law and the regulations in accomplishing your discharge.

You have raised a question with respect to retention in active duty status during the advance notice period. The Commission's regulations do provide, with certain exceptions not applicable in your case, that a preference eligible shall be retained in an active duty status during the advance notice period required in connection with a proposed discharge. The record shows, however, that you were not in an active duty status at the time the advance written notice of June 6, 1962, was issued to you and that you had, in fact, at that time been continuously absent without leave since May 7, 1962. In the notice of June 6, 1962 you were informed that you would be in full pay status and in duty status if you reported to your duty station in Detroit, Michigan, and that otherwise you would continue to be absent without leave unless you requested leave and such request were approved. In subsequent communications during the notice period, including even the notice of decision under date of August 1, 1962, you were repeatedly informed that you would be in an active duty status upon reporting to your assigned post of duty in Detroit, Michigan. Under the circumstances, it is apparent that the Department of Labor did not

violate the regulatory requirement that you be retained in an active duty status during the advance notice period and that the reason you were not in an active duty status during that period was your own failure to report to your assigned post of duty.

In substance, the reasons relied upon by the Department of Labor for your discharge were your failure and refusal to report to your assigned post of duty in Detroit, Michigan, beginning on May 7, 1962, and continuing through June 6, 1962, the date of the advance written notice of your proposed discharge. That you did fail and refuse to report for duty as was charged by the Department is fully supported by the evidence of record, including your own admissions. Hence, the Board finds the charge which was the basis for your discharge to be sustained.

The remaining issue for determination by the Board, therefore, is whether your discharge on the basis of the sustained charge was for such cause as would promote the efficiency of the service. Generally, it is the opinion of the Board that the efficiency of the service is promoted by discharging employees who fail or refuse to report to their assigned posts of duty. Hence, the critical question for the adjudication of your appeal is whether there were exceptional circumstances in your case which would justify a finding that your discharge for failing to accompany your activity to Detroit, Michigan, was not warranted.

You have contended that the reassignment changing your duty station from Washington, D. C., to Detroit, Michigan, was illegal and otherwise improper and that because of such illegality and impropriety you were not required to comply with the instructions you received to report for duty in Detroit, Michigan. As to the alleged illegality of the change in duty station, you have cited no law which prohibited the Department of Labor from changing your assigned duty station, and the Board knows of none. On the contrary, the record shows that your duty station was changed by administrative officials of the Department of Labor who were exercising authority lawfully delegated to them by the Secretary of Labor for making such changes in the assignments of the Department's employ-

ees. Your various other allegations of impropriety with respect to your reassignment show merely that your judgment as to whether your change in duty station was in the best interests of the service differed from that of the responsible officials of the Department of Labor who were authorized to make that determination in your case. It is patent that disagreement by an employee with the judgment of his official superiors cannot provide a proper basis for the employee's failure or refusal to report to his assigned post of duty so as to support a finding that discharge of the employee for such failure and refusal does not promote the efficiency of the service. The Board is thus unable to find in your case any exceptional circumstances to justify a finding that your discharge for failing to accompany your activity to Detroit, Michigan, was not warranted.

In view of the foregoing, and as a result of its full review of the entire appellate record, the Board of Appeals and Review concludes that the action of the Department of Labor discharging you from employment, effective August 3, 1962, was in compliance with the procedural and substantive requirements of Section 14 of the Veterans' Preference Act of 1944, and the decision of the Appeals Examining Office to sustain that action is, for the reasons set forth herein, affirmed.

Part 22 of the Civil Service Regulations provides that the decision on an appeal to the Board shall be final, and there is no administrative right of appeal from the Board's decision.

For the Commissioners:

Sincerely yours,

/s/ E. T. Groark

Chairman, Board of Appeals and Review

[Government Exhibit A — Enclosure No. 66]

P. O. Box 1052
Baltimore, Md. 21203
Aug. 26, 1963

Registered Mail

U. S. Civil Service Commission
Washington 25, D. C.

Re: BAR:JWH:IS:plb 6/4/63

Gentlemen:

In order to make unnecessary the filing of a legal action which I am preparing, and in accordance with Section 22.504 of the Commission's Regulations, please reopen and reconsider the decision cited above. Please note especially the last sentence of the first paragraph of page 3 of that decision.

The decision of the Board of Appeals and Review is a fraud — it was written in contemptible deliberate disregard not only of my rights under the Commission's Regulations, but of the Commission's own legal duties under those same regulations.

I can of course prove the preceding statement. But to make me do so in court would be an imposition on me, on the court, and on the taxpayers who pay your salaries.

Respectfully yours,

/s/ Wilfred Handler

[Government Exhibit A — Enclosure No. 76]

UNITED STATES CIVIL SERVICE COMMISSION
WASHINGTON 25, D.C.

Jan. 7, 1964

Mr. Wilfred Handler
P. O. Box 1052
Baltimore, Maryland 21203

Dear Mr. Handler:

Reference is made to your request that the Commissioners reopen and reconsider your appeal from the action of the Department of Labor removing you from the position of General Investigator.

The Commissioners have given consideration to your request, but they have found that the current representations fail to demonstrate probable error in the previous decision of the Board of Appeals and Review. Accordingly, the request for reopening of your case is denied. The decision of the Board of Appeals and Review, dated June 4, 1963, remains as the final decision of the Commission, and thus your administrative appeal rights within the Commission were thereby exhausted. By direction of the Commission:

Sincerely yours,

/s/ Mary V. Wenzel

Executive Assistant to the Commissioners

[Defendants' Motion for Protective Order and Opposition to Interrogatories]

PROCEEDINGS [May 10, 1965]
[In the District Court]

[2] THE DEPUTY CLERK: Handler versus the Secretary of Labor.

THE COURT: Maybe we can shorten this. I don't like to pre-judge, but I studied this matter and it seems to me this matter should be held in abeyance until the summary judgment matter is decided. If that is granted, it may make this entire matter moot. I don't know why I should be taking time to go into this matter.

Has the motion for summary judgment be argued?

MR. ZIMMERMAN: No, Your Honor.

THE COURT: When is it coming up?

MR. ZIMMERMAN: I don't know. There seems to be a jam-up in long motions for the moment.

THE COURT: It will be within a month or so?

MR. ZIMMERMAN: I certainly hope so.

THE COURT: It would seem to me this should be held in abeyance until that time.

MR. HANDLER: Your Honor, the motion that is scheduled for hearing today was filed untimely, and plaintiff waived this untimeliness under certain conditions which defendant has violated.

[3] THE COURT: Well you can argue that question out later too. That will become moot if summary judgment is granted.

MR. HANDLER: Well in my defense --

THE COURT: You are not prejudiced at all by this matter being continued. If summary judgment is granted against you, this whole matter is moot.

MR. HANDLER: Yes, sir, but I want to make this observation: In my opposition to defendant's motion I point out if these interrogatories are answered, the answers will aid me in my opposition to defendant's motion for summary judgment.

THE COURT: I don't see how they can. I don't see how under the slightest consideration they can aid you in the summary judgment motion.

MR. HANDLER: Merely that in my allegations of fraud I would be able to identify the persons whom I am alleging --

THE COURT: Just identifying the persons isn't going to -- that isn't the issue in the summary judgment motion. The issue in the summary judgment motion is whether you have had due process.

Are you an attorney?

[4] MR. HANDLER: No, sir.

THE COURT: You see, this is why you do not understand the ramifications of this: I suggest that you are not in a position, very frankly, to handle a matter of this kind without being trained in the law.

MR. HANDLER: Your Honor, I --

THE COURT: If there is any merit whatsoever to your claim, and you have a justifiable claim, it merits the attention of an attorney. Even with an attorney these matters are at their best technical.

MR. HANDLER: Your Honor --

THE COURT: You are trying to interrupt me.

The Government claims here that you have had due process, that you had a fair hearing, and that as I understand it, there has been review procedure too, that the administrative proceedings have been exhausted; is that correct?

MR. ZIMMERMAN: Yes, Your Honor.

THE COURT: And I want to tell you a fundamental basic principle of law which laymen do not understand, that courts cannot interfere with the decisions or conclusions of the Executive Department of the Government, even though the judge might disagree with the conclusion, the judge can't interfere with it.

[5] We can give you hundreds and hundreds of cases in support of that proposition, provided there has been due process, there has been

a fair hearing, and there has been a full opportunity accorded the individual to have his day in court in the administrative process.

The Government contends in its motion for summary judgment that you have had your day in court and therefore this does not involve the necessity of a trial, and that the Government should have summary judgment against you and that will end the matter.

Merely identifying these parties for you isn't going to assist you in your motion for summary judgment. And I want to conclude my statement to you by reiterating what I said at the outset, that if this case means anything to you at all, you better get a lawyer. In fact, you should have had a lawyer at the very outset to advise you whether you had a chance to come into court and make anything of this case.

Now you can say whatever you want to say.

MR. HANDLER: Thank you, Your Honor. The reason why I tried to interrupt you is because I possibly misled you. I am not a lawyer, but I do have a law degree.

THE COURT: You haven't been admitted to the Bar?

[6] MR. HANDLER: No, sir. That is why I said that I am not a lawyer, but I am familiar with the principles of law that you enunciated.

THE COURT: You are not sufficiently familiar with it when you suggest that merely identifying parties is going to help in your motion for summary judgment defense.

You haven't practiced law I take it?

MR. HANDLER: No, sir, I have not. I do want to get to summary judgment, a discussion of that, if I can, but one more observation I would like to make about the identification of the defendants. It is my feeling --

THE COURT: What do you mean by the identification of the defendants?

MR. HANDLER: Of the people who committed the alleged fraud.

THE COURT: What do you mean by the identification of them?

MR. HANDLER: Well --

THE COURT: What are you asking for?

MR. HANDLER: If the answers to the interrogatories were furnished --

THE COURT: Can't you answer my question?

MR. HANDLER: What is that, sir?

[7] THE COURT: What do you mean by identification of the parties?

MR. HANDLER: Well I have alleged that certain Civil Service Commission orders are fraudulent.

THE COURT: I know what you alleged. Who do you want identified? Do you want the defendant to come in and admit there are certain individuals who have committed fraud?

MR. HANDLER: No, sir.

THE COURT: What are you asking for?

MR. HANDLER: I am asking who wrote these decisions that I say are fraudulent.

THE COURT: You can find that out. Inspect the records.

MR. HANDLER: The records do not reveal that.

THE COURT: How about that, counsel?

MR. ZIMMERMAN: These are subordinates, Your Honor, who prepared the documents.

THE COURT: Maybe you can tell me what he is asking for. He doesn't seem to know.

MR. ZIMMERMAN: He wishes to know who wrote certain decisions rendered by the Civil Service Commission, who participated in them.

[8] THE COURT: I don't think that will help you in defense of the motion for summary judgment who wrote the opinions.

MR. HANDLER: It is my feeling in most of these cases, if the plaintiff wins he is reinstated to the position and nobody questions, the party is never identified. For that reason, these parties are encouraged to put this question of fraud to a court test. They lose nothing if they lose the case.

THE COURT: The Court isn't going to consider this aspect in determining whether the Government is entitled to summary judgment. That isn't relevant to the matter. That is why I say even though you received this information it isn't going to be of assistance to you.

MR. HANDLER: Then I have one final observation if you permit me. I think I can demonstrate here today, rather briefly, that this motion for summary judgment was originally prepared without any thought --

THE COURT: Now I am not going to hear anything about that, because that is on another Judge's calendar. I will not hear anything in connection with the motion for summary judgment. It is not proper. It is not before me today. The only thing before me today is whether the [9] Government is correct, and I think it is, that this matter should be held in abeyance without prejudice to reasserting it in case the Government's motion for summary judgment is denied. That is all that is before me this morning.

If the Government's motion for summary judgment is denied, and you win out on that, you are not prejudiced one iota. I will hear you fully out.

MR. HANDLER: My thought on that was this, Your Honor: If you don't see my way of thinking --

THE COURT: You want to get into the motion for summary judgment.

MR. HANDLER: No, sir.

THE COURT: You were getting into that.

MR. HANDLER: This is what I proposed to do. Your reason for not hearing the motion on the interrogatories is simply the fact that the motion for summary judgment has been filed.

THE COURT: No, that isn't stating it correctly. That shows why you need to have practiced law, to learn a little more about interpreting and listening to what I said.

I said getting the information as to the lower [10] echelons, if you may call them such, who wrote these opinions, will not assist you in any way in sustaining your position that the motion for summary judgment should not be granted, that was what I said.

MR. HANDLER: One thing frankly I don't understand, sir, in view of the fact that the motion for protective order regarding the interrogatories was filed first, why the motion for summary judgment takes precedent.

THE COURT: You know, that is something that has no relation to what I am deciding this morning at all, who files first isn't the important thing. What we are trying to do is save the time of the parties.

MR. HANDLER: No, sir.

THE COURT: And get the calendars into shape and avoid the necessity of trial if at all possible. The philosophy of the summary judgment procedure is that, assuming the undisputed facts that are before the Court, that plaintiff is not entitled to any relief.

MR. HANDLER: I understand that, sir.

THE COURT: That is the basic philosophy of the summary judgment motion.

MR. HANDLER: Your Honor, you said it doesn't matter who filed first. I should point out that the [11] defendant filed both these motions.

THE COURT: That doesn't make any difference. That doesn't help you any on this motion this morning.

MR. HANDLER: Well you are not hearing arguments on the first motion defendant filed because he subsequently filed the second motion.

THE COURT: I am hearing the motion that is properly before me.

MR. HANDLER: Which is the interrogatories.

THE COURT: Yes.

MR. HANDLER: As I understand it, you refuse to hear any argument on it because of the motion for summary judgment.

THE COURT: That is exactly correct, because it will become moot; and I don't propose to waste my time, your time or the Govern-

ment's time in hearing this matter or deciding it as long as it will become moot if the Government's motion for summary judgment is granted, and in examining the file, without judging the matter myself, I have the idea you are going to have a hard time in opposition to the Government's motion for summary judgment.

MR. HANDLER: Your Honor, if the motion that we are supposed to hear today is moot, defendant himself has made it moot, and you say there is no use wasting our time. [12] Defendant caused that situation.

THE COURT: You may draw an order, counsel, holding in abeyance this matter until the motion for summary judgment is decided.

MR. HANDLER: Your Honor, may I have an order drawn giving me additional time to answer this summary judgment?

MR. ZIMMERMAN: You needn't have the Court rule on that. You may have what time you need.

THE COURT: Counsel will give you time. How much time do you want?

MR. HANDLER: I would like forty-five days.

MR. ZIMMERMAN: Perfectly all right.

MR. HANDLER: Isn't a Court order required for anything for thirty days?

THE COURT: You can provide in the order you draw that he can have forty-five days in which to file his opposition to your motion for summary judgment.

MR. ZIMMERMAN: Yes, Your Honor.

THE COURT: I still suggest to you if you have merit to your cause of action you better employ someone who has practiced law and who is familiar with this matter, but that is your prerogative.

[13] MR. HANDLER: Thank you, sir.

(Thereupon, hearing in the above-styled cause was then concluded.)

[Filed May 11, 1965]

ORDER

This cause having come before the Court on defendants' motion for protective order and opposition to "Plaintiff's Interrogatories to Defendants, Rule 33, Federal Rules of Civil Procedure" and plaintiff's opposition thereto, and the Court having heard the parties and considered the matter, and being fully advised in the premises,

It is by the Court this 11th day of May, 1965,

ORDERED:

1. That defendants' motion for protective order be, and the same hereby is, granted without prejudice and any and all discovery is held in abeyance pending further order of the Court following upon its disposition of defendants' motion for summary judgment.

2. That, upon the consent of defendants, plaintiff is granted until July 10, 1965 within which to file a cross-motion for summary judgment and opposition to defendants' motion for summary judgment.

/s/ Youngdahl

United States District Judge

[Filed May 26, 1965]

**DEFENDANTS' SUPPLEMENT
TO MOTION FOR SUMMARY JUDGMENT**

Come now defendants by their attorney, the United States Attorney, for the District of Columbia, and supplement their motion for summary judgment as follows:

Incorporated therein and made a part thereof by attachment is the annexed portion of the certified Civil Service Commission records, entitled "Petition For Secretarial Review Grievance Decision of Wil-

fred Handler". This supplement is identified as Government Exhibit "C".

At the hearing before the Court held May 10, 1965 on defendants' motion for protective order, plaintiff brought to the attention of defendants' counsel the absence of this material from the certified record. At the request of defendants' counsel, the Civil Service Commission has now certified it for inclusion in the record for consideration by the Court in connection with review of the case.

/s/ David C. Acheson

[Filed May 26, 1965]

[Excerpts from Government Exhibit C]

Petition For Secretarial Review
Grievance Decision of Wilfred Handler

CONTENTS

Par. No.		Page
1	Introduction	1
2	Illegality - 3 bases stated	3
3	" Basis #1 - Department Violated Its Own Rules	4
3(A)	" " Par. 1 of Exhibit B discussed	5
3(B)	" " " 2 " " " "	6
3(C)	" " " 3 " " " "	6
3(C)(1)	" " " " " " "	
	(First half)	7
3(C)(2)	" " " " " " "	
	(Second half)	12
3(D)	" " " 4 " " " discussed	16
3(E)	" " " 7 " " " "	17
3(F)	" " Exhibit B - Summary	18
3(G)	" " Violation of Personnel Instruction No. 6; III B2C	19
3(H)	" " Violation of P.I. #6, III A2C; III B2C	24

4	"	Basis #2	26
5	"	Basis #3	28
6		Inequity & Immorality; Introduction	28
7		Grievance Committee Report; Introduction	28

[Filed May 26, 1965]

[Excerpts from Government Exhibit C]

[18] 3(F) Exhibit B — Summary: The first and second half of the third paragraph of Exhibit B each reveals a fatal violation of the Department's rules. On the whole, Exhibit B appears to evidence a distressing lack of sincerity and/or a lack of awareness of the significance of the information contained therein.

[Government Exhibit C — Page 19]

3(G) Violation of Personnel Instruction No. 6
(Revised August 8, 1960), Page 7 — Part III B2C:

In the violation of Personnel Instruction No. 6, Page 7 — Part III B2C, the Office of Personnel representative, Mr. Harold E. Finnegan refused to give the Committee relevant information, thereby irreparably injuring Handler.

Background of the violation: Mr. Anthony Albamonte is currently retained in Washington, performing General Investigator duties, while Handler, General Investigator, is scheduled for "decentralization" to Detroit. The Hearing Transcript (bottom page 102-103; middle page 106 to middle page 108) discloses, via testimony of Management's representative, Mr. James Murphy, and testimony of Mr. Harold Finnegan, Office of Personnel Administration representative, the following:

[Government Exhibit C — Page 20]

Albamonte was actually hired to fill an Investigator position (GS 1810), but he does not have the qualifications for the GS 1800 series. To circumvent the qualification requirements, Albamonte was hired ostensibly as an Auditor (GS 510), assigned ostensibly to the Office of Reports and Analysis, and then immediately "detailed" to the Office of Compliance and Enforcement to perform GS 1810 Investigator duties. Albamonte has in fact never worked for the Office of Reports and Analysis on the job for which he was ostensibly hired, but has remained in the Office of Compliance and Enforcement, on the Investigator job to which he was ostensibly detailed. (See the beginning of page 123 of the Hearing Transcript.)

Pages 102-103, 106 to 108 of the Transcript reveal further that Albamonte's Official Personnel Folder reflect the following information:

3-28-60 Entered duty BLMR, Auditor GS 510 (Office of Reports and Analysis)

4-1-60 Detailed, not to exceed 6 months, Investigator GS 1810 (Office of Comp. & Enf.)

[Government Exhibit C-Page 21]

9-30-60 Detail terminated

2-1-61 Detail, not to exceed 6 months, Investigator GS 1810 (Office of Comp. & Enf.)

7-31-61 Detail terminated

On the basis of the above records, according to Mr. Finnegan's Hearing testimony, it would be assumed that, on the termination of each of the details, Albamonte returned to his "regular" auditing duties with the Office of Reports and Analysis. On Transcript page 109 et seq., Mr. Finnegan explains that BLMR's notifications to the Office of Personnel Administration terminating Albamonte's details were mandatory, as prior permission from the Civil Service Commission is necessary to extend details beyond 6 months. Reference is also made in the Trans-

cript to page X-1-38 of the Federal Personnel Manual, and the additional provision therein that details should be avoided for the first 3 months of an employee's employment.

Mr. James Murphy testified (Transcript, page 103) that upon BLMR Management's attempt to decentralize Albamonte to Denver as an Investigator

[Government Exhibit C - Page 22]

(GS 1810), the Office of Personnel Administration demurred, noting that Albamonte did not qualify as an Investigator. It is now proposed, says Mr. James Murphy (Transcript, page 103), that Albamonte be placed in a training status for a year, in order to qualify him as an Investigator. Again (Transcript, page 256), Mr. James Murphy indicates that, in order to retain Albamonte in the Bureau, he will be placed in a training status for a year in order to qualify for the GS 1810 position. This latter information clearly indicates that the GS 510 position, for which Albamonte was ostensibly hired, did not and does not exist — so that, his "detail" having "ended", Albamonte now has no regular position to which to return. In order to be retained in the Bureau, he must now be trained for a year to qualify for the position for which, actually, he was originally hired almost two years ago, in March 1960. (End of background of the violation of P.I. #6)

The Violation of Personnel Instruction No. 6: Mr. Finnegan is asked to justify Albamonte's currently, and admittedly, continuing to function as a General Investigator after

[Government Exhibit C - Page 23]

the ostensible termination of his detail on July 31, 1961. In response to Handler's query, Finnegan stated: "We are not required to justify it. I don't see the relativity." Chairman Christian then said to Mr. Finnegan: "You can comment on this . . ." Mr. Finnegan again refused to answer. (See bottom half of page 282 through page 284 of Transcript.)

Handler contends that Mr. Finnegan's refusal to describe, explain, condemn or justify Albamonte's current status in the Office of Compliance and Enforcement is in violation of the requirement in Personnel Instruction No. 6, III B2c, that he "furnish expert advice on personnel matters." The Committee's uncertainty as to whether Civil Service rules are being violated is evidenced by Item No. 2 of the Committee's findings which reads in part: "... rules and regulations laid down by the U.S. Civil Service Commission were evaded, if not violated." Handler contends that the Committee's recommendations might very well have been materially different had Mr. Finnegan's answer been responsive to the question regarding Albamonte's current status.

* * *

[Government Exhibit C — Page 27]

Handler further contends that Albamonte's Official Personnel Folder contains fraudulent entries regarding the termination of details after six months, deliberately made in order to conceal violations of Civil Service Regulations. (See page X-1-38 of the Federal Personnel Manual.) Indeed, as explained in Paragraph No. 3(G) of this Petition, it would appear that all the Dept. of Labor entries in Albamonte's folder, beginning with his entry on duty in March, 1960 are deliberately false, or are based on false information deliberately forwarded by BLMR to the Office of Personnel Administration. The entries reflect his appointment to a GS 510 position, with subsequent details to a GS 1810 position, whereas in fact Albamonte was hired to fill, and has in fact been filling since his entrance on duty, a GS 1810 position for which he does not qualify. The training program now allegedly proposed for Albamonte is a shameful attempt to retroactively legitimize, and perpetuate, a situation fraudulent from its very beginning.

[Government Exhibit C — Pages 29 - 30]

7(A) Committee's Report:

"The Complaint and its general context": Some of the "facts" stated in this part of the Committee's Report are questionable, others are misleading. For example, in the next to last paragraph of page 1 of the Report, the Committee relates that Handler was advised in March 1961 of his decentralization to Chicago, that later Management agreed to Handler's request that his assignment be shifted to Cleveland, and still later Management acceded to Handler's request that it be changed again to Detroit. The facts are as follows: With the exception of the last two days of the month, during which time Handler was on Annual Leave, Handler was on a Field Trip in Tennessee the entire month of March 1961. The cited advice to Handler, in March 1961, of his decentralization to Chicago, was received by Handler in Tennessee via a 'phone call from his supervisor, Mr. Ballard, in Washington. In that same 'phone call, Mr. Ballard advised Handler that Detroit and Cleveland were "open"; Mr. Ballard solicited an expression from Handler of a preference for Detroit or Cleveland, if Handler so desired. Mr. Ballard stated that "nobody wanted Detroit or Cleveland." In that same 'phone call, or in a 'phone call the next day, Handler advised Ballard of his preference for Cleveland. A few days later, still from Tennessee and still by 'phone, Handler advised Ballard of his preference for Detroit. Ballard said the office would be "delighted", as they were having trouble filling Detroit. See Transcript of Hearing, upper part of page 266, where Mr. James Murphy, Management's representative, says: ". . . Nobody wanted Chicago, Detroit, I believe. Nobody wanted Cleveland. Nobody wanted the less desirable high cost of living locations." Item #1 of Exhibit L, Memo from Handler to Ballard, dated April 13, 1961, written after Handler returned from Tennessee, asks for written confirmation of Ballard's previous telephone advice that he would be transferred to Detroit.

[Government Exhibit C — Sub-exhibit A]

MEMORANDUM

October 12, 1961

To: Mr. Harold E. Finnegan, Office of Personnel Administration
 From: W. Handler, Aggrieved Employee
 Subject: Request for Secretarial Review, Handler Grievance

1. Only for the purpose of meeting the five day time limitation for requesting Secretarial review of grievance decisions, please consider this Memo a compliance with page 9 of Personnel Instruction No. 6 (Part III B3).

2. In its final form, my petition for Secretarial Review of the decision of my Grievance will include my written comments and analysis of the Commissioner's decision. Said comments and analysis will be prepared at a future date, within a reasonable time after I receive the following:

* * *

3. Paragraph 2 above is to confirm my understanding of the agreements reached by you and me ***.

[Government Exhibit C — Sub-exhibit B]

To: Mr. W. Handler
 From: Edward L. McVeigh
 Director of Personnel
 Subject: Questions Raised in Your Memoranda of October 12 and 19, 1961 to Harold E. Finnegan and David E. Christian Respectively

Date: Nov. 7, 1961

When the Grievance Committee made its recommendation to Commissioner Holcombe and forwarded the supporting records to my office,

it ceased to exist as a Committee. For this reason, I am answering both memoranda. The memorandum of October 12 will be answered first.

In paragraph two (a) you request the stenographic notes made of the oral summations at your grievance hearing to be transcribed. I have requested the Bureau of Labor-Management Reports to fill in from stenographic notes the gaps in the transcription of your summary to the extent possible. As soon as the completed transcript is available, you will be provided with a copy.

In paragraph two (b) you request of Mr. Christian an explanation for the failure to comply with the time limitations prescribed by Personnel Instruction Number Six. According to my information, the composition of the Committee was not agreed upon until late June or early July. The Committee devoted approximately three weeks to collecting material and in attempting to resolve the matter without a hearing. When the Committee was ready for the hearing, you asked for a delay of approximately a week in order to refresh yourself with your notes. Upon completion of the hearing, the tapes had to be transcribed. The last of the transcription was received on September 5. The transcript was transmitted to the parties on September 7, for such corrections as they wished to submit. Because of the imperfections in the summaries the Committee then invited both parties to "resummarize" and extended the time limit for return of corrections to September 22. The Committee's finding then was actually released on September 28. I understand you were kept informed by a representative of my office of each development as it occurred. Under the circumstances, I consider the Committee's actions to have been timely.

In paragraph two (c) you request a written statement from the Grievance Committee of its failure to honor your request that (1) you be given access to the tapes of your hearing, (2) BLMR be asked to transcribe that portion of the stenographic notes containing the oral summations; and (3) you be provided the identity of the firm that pre-

pared the transcript from the tapes. Mr. Christian tells me the Committee had no objection in principle to granting your requests, but chose not to do so as the Committee was reluctant to take steps which were not needed for a fully-considered decision on its part.

In paragraph two (d) you request of Mr. Christian a statement of which "proposed" transcript corrections were adopted by the Committee. Mr. Christian tells me the Committee added all "proposed" corrections to each copy of the transcript.

In paragraph two (f) you request an opportunity personally to inspect and check in detail the copy of the transcript forwarded to the Secretary in connection with his review of your appeal. The transcript will be available during office hours for your appeal.

In your memorandum of October 19, 1961, you request a written authorization to discuss with the firm that typed the transcript of your hearing, the firm's preparation of the transcript. A representative of my staff has talked with the manager of the firm, who said the office has neither the tapes nor a copy of the transcription. Since typing the transcription of your hearing, the firm has typed numerous transcriptions so their recollection relating to your transcription is dim. My office has the tapes and will make them available for you to play back. Under the circumstances, there is no reason for you to contact the reporting firm. Your request is, therefore, not granted.

[Filed Nov. 15, 1965]

**PLAINTIFF'S OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

Comes now plaintiff in proper person and opposes defendants' motion for summary judgment.

In support of his opposition, plaintiff submits herewith: Plaintiff's

Exhibits 1 through 16, Plaintiff's Appendix 1, a Statement of Material Facts, and a Memorandum of Points and Authorities.

Oral hearing is requested.

/s/ Wilfred Handler
Plaintiff, pro se

[Filed Nov. 15, 1965]*
[Plaintiff's Exhibit No. 2]

To: Mr. Wilfred Handler
From: Edward J. McVeigh
Director of Personnel

Date: November 30, 1961

Attached are three pages containing the transcription of the opening remarks of your summation at your grievance hearing. To the best of my knowledge, this completes the transcription I agreed to provide to you.

In the light of your request for additional time to review this additional transcript (2-1/2 pages) and to prepare your brief, you are granted ten calendar days, beginning December 1, 1961, in which to prepare your petition to the Secretary. Therefore, your petition to the Secretary seeking his review of the Bureau's decision on your grievance must be received in my office by the beginning of business Monday, December 11, 1961. Within this period, you may be granted not more than two and one-half days of official leave in accordance with arrangements you make with the Administrative Office of the Bureau of Labor-Management Reports.

* All documents labeled "Plaintiff's Exhibit" were filed first as enclosures to Government Exhibit A, on May 6, 1965. But since the component parts of Government Exhibit A were not readily distinguishable, plaintiff, for the District Court's convenience, re-filed as his own exhibits certain enclosures of Government Exhibit A.

[Filed Nov. 15, 1965]*

[Plaintiff's Exhibit No. 3]

To: Mr. Wilfred Handler
Bureau of Labor-Management Reports

Date: Apr. 2, 1962

From: Edward J. McVeigh
Director of Personnel

This is in reply to your memoranda of March 19 and March 30.

I am enclosing a copy of the Secretary's decision with respect to your grievance. The terms thereof are self-explanatory.

In response to your question as to your status when you are absent from work, my conclusions, based upon the provisions of Personnel Instruction No. 27, Attendance and Leave Administration in the Department of Labor, are as follows:

1. If your absence from duty is properly authorized, you may be in annual leave status, sick leave status, or without pay status in accordance with the definition of those terms as provided in Personnel Instruction No. 27.

2. If you are absent from duty without authorization, as provided above, you will be absent without leave.

If your memorandum of March 30 was a request that you be granted official leave when absent from duty, your request is herewith denied.

Enclosure

* Footnote page 140 above.

[Enclosure to Plaintiff's Exhibit No. 3; Filed November 15, 1965]

U.S. DEPARTMENT OF LABOR
Office of the Assistant Secretary
Washington

February 27, 1962

MEMORANDUM

/s/ OK A.J.G. 3/30/62

To: The Secretary
From: David S. North
Re: Wilfred Handler Grievance

This is a long, complicated and bitter dispute between the Bureau of Labor-Management Reports and one of its financial investigators, Wilfred Handler.

Handler was hired away from the Internal Revenue Service by BLMR in its early days. The hiring was done without an interview, which proved to be a fundamental mistake. Handler, a resident of Baltimore, was assigned to Washington. Subsequently, most of the financial investigators, but not all, were decentralized. Handler filed the grievance when ordered to Detroit. He contends, among other things, that he was hired without notice that the jobs were to be decentralized, and that the criteria management said it used to select investigators for decentralization were, in fact, not used. He wants to work in Washington so that he may retain his residence in Maryland which is a prerequisite to his taking that State's bar examination on March 5 and 6.

If management's personnel practices had not been so lacking in uniformity, clarity and in precise attention to the details of Civil Service procedures, Handler would not have a case. Management's actions, as the Grievance Committee remarked, invited the filing of the grievance. The Bureau, however, despite its personnel practices, needs financial investigators in the field. The Grievance Committee recommended that the transfer of Handler to Detroit be allowed to proceed, but that the De-

partment's Personnel Office should explore alternative job possibilities so that he could retain the bona fide residence of Maryland which he so much desires.

Many months have passed since Handler was ordered to Detroit; though Handler's position, and presumably that of the Bureau (see Commissioner Holcombe's memo of October 9), have not changed, perhaps the personnel needs of the Department have.

Recommendation:

Bearing these factors in mind, I would recommend the following course of action:

1. The Director of Personnel shall contact all bureaus using financial investigators, and any bureau, such as Labor Standards, which may use such investigators in the near future, to see if there are any opportunities to transfer Handler. The Director of Personnel will be given thirty days to conduct this survey. The decisions of the bureaus involved shall be reported to the Secretary, through the Director of Personnel. The decision to transfer Handler to another bureau, or not to do so, as reported by the Director of Personnel, shall constitute part of the Secretary's decision in this matter, and will not be subject to any other grievance proceedings of any kind.
2. During these thirty days, the Bureau of Labor-Management Reports shall also canvass its personnel needs, to see if any other duty station can be found for Handler other than one which would cause him to live outside the State of Maryland. The Bureau's decision on this matter, shall not be subject to any further review, and will become an integral part of the Secretary's decision.
3. Should neither of these actions result in a new assignment for Handler, the Bureau of Labor-Management Reports shall assign him where he is needed at the end of the thirty-day period.

The thirty day period is suggested for two reasons. It will give the Director of Personnel a reasonable length of time to make a thorough search for an alternative position for Handler, and it will remove from Handler's mind (while he is taking the bar examination) the threat of an immediate removal to another city.

I have suggested to the Director of Peronnel that we have no further dealings with the court reporting firm which produced the attached transcript. There is an inexcusable number of errors to the extent that in some places the transcript is virtually impossible to follow. It would also help if such documents were preceded by a list of the dramatis personae.

I am returning the complete file to you.

Attachment

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

OK a.g. *[Handwritten initials]*
February 27, 1952
3/30/62

MEMORANDUM

To: The Secretary
From: David S. North
Re: Wilfred Handler Grievance

This is a long, complicated and bitter dispute between the Bureau of Labor-Management Reports and one of its financial investigators, Wilfred Handler.

Handler was hired away from the Internal Revenue Service by BLMR in its early days. The hiring was done without an interview, which proved to be a fundamental mistake. Handler, a resident of Baltimore, was assigned to Washington. Subsequently, most of the financial investigators, but not all, were decentralized. Handler filed the grievance when ordered to Detroit. He contends, among other things, that he was hired without notice that the jobs were to be decentralized, and that the criteria management said it used to select investigators for decentralization were, in fact, not used. He wants to work in Washington so that he may retain his residence in Maryland which is a prerequisite to his taking that State's bar examination on March 5 and 6.

If management's personnel practices had not been so lacking in uniformity, clarity and in precise attention to the details of Civil Service procedures, Handler would not have a case. Management's actions, as the Grievance Committee remarked, invited the filing of the grievance.

[Filed Nov. 15, 1965]*
 [Plaintiff's Exhibit No. 4]

To: The Secretary June 24, 1962
 From: W. Handler, Compliance Officer, BLMR
 Richard P. Burdette, Compliance Officer, BLMR
 Subject: Employee Grievance, case of Handler
 Employee Grievance, case of Burdette

The processing of each of the employee grievances named above has thus far been a farce.

Burdette's petition for Secretarial review of his grievance decision was today submitted through the Director of Personnel — in order to comply with Personnel Instruction No. 6. Please see attached. The petition to you, submitted through the Director of Personnel as is required, is not accompanied by a summary of Burdette's position; our experience tells us that such a brief would be completely ignored. Our experience tell us that possibly no one in your office would even see the brief!

Our experience indicates that the Office of Personnel Administration is willing to do or condone whatever may be necessary to enable BLMR Management, right or wrong, to sustain its position in both of the grievances named above — even though this entails making a mockery of Departmental and Civil Service rules, and even though there is involved the waste of Federal funds and the violation of Federal statutes. There is evidence that not only the Commissioner of the Bureau of Labor-Management Reports, but the Director of Personnel as well, are personally aware of, if not indeed an integral part of, this unsavory situation.

Our experience, briefly but more specifically, has been as follows: In June 1961 we each filed a grievance, based in large part on the same facts, regarding the change in our posts of duty from Washington, D.C. to Detroit and Chicago. Reprisals against us by BLMR Management commenced at once. We requested separate grievance hearings —

* Footnote page 140 above.

after what later proved to be the usual delay, Handler's hearing was held.

Handler's hearing was unfair; the Committee was obviously hostile throughout the hearing. Regarding the Committee's decision: the Committee's findings of fact preponderantly sustained Handler, but the Committee's recommendations of specific action, illogically inconsistent with its findings of fact, went against Handler. In its findings of fact, the Committee implicitly finds: that Management has falsified personnel records, that Management has materially falsified written material it had submitted to the Committee, and that Management witnesses have lied to the Committee. The findings also state: "... management's handling . . . invited the grievances that have now appeared". The findings also imply that Handler's transfer from Washington is inequitable. But Commissioner Holcombe was persuaded by the Committee's illogical recommendations of action rather than by its findings of fact.

Handler petitioned you for a review of the Commissioner's decision — Handler's petition was accompanied by a brief, documented and as detailed as time permitted. A decision, written by Mr. David S. North and ostensibly adopted by you, has been interpreted by Commissioner Holcombe as sustaining his decision. Mr. North's (your?) decision ignored Handler's brief, there was no indication that Mr. North (or you?) had read the brief. In short, the questions raised on "appeal," submitted to you through the Director of Personnel, not only remain unanswered, they remain unacknowledged. (Is it significant that Handler's appeal, submitted to you through the Director of Personnel, and thereafter apparently ignored, discredits the Office of Personnel Administration?) Out of respect for himself and for the Civil Service Merit System, Handler has refused to accept his change in post of duty. Handler is now in an involuntary and apparently illegal non-pay status, awaiting a third attempt by BLMR Management and the Office of Personnel Administration to produce an adequate letter proposing his separation.

After the usual outrageous deliberate delays, Burdette's grievance hearing was finally held. (A new Committee was formed to hear Burdette's case.) Having been discredited during Handler's hearing, Management conceded, during Burdette's hearing, virtually all the basic facts regarding the main issue (transfer out of Washington, D.C.). The majority Committee opinion sustained Burdette. The Commissioner's decision of Burdette's grievance, being appealed from in the attachment herewith, overruled the majority Committee opinion. The Commissioner's decision is totally misleading; essential facts are missing; in part it is demonstrably untrue; to one familiar with the facts of the case, the decision is generally incredible, including that portion of the decision indicating that the question is now academic because only one Financial Investigator is to remain in Washington.

The minority Committee opinion in Burdette's case, written by the Committeeman chosen by Commissioner Holcombe, found against Burdette on technicalities which can be easily refuted. But even this Committeeman, in his minority opinion, is moved to say:

Both from the documentary evidence, and the testimony developed at the hearing, there arises an aura which reflects upon Management's competence - - - Some of it may represent a basic lack of managerial knowledge, or perhaps a disinclination to accept the restrictions of the Federal personnel system - - - Finally, some of the material has been characterized as possibly indicative of misfeasance or malfeasance.

Both our grievances have been marred by fatal procedural defects. Also, during the past year of consideration of our greivances, we have been subjected to reprisals and to attempted entrapment, and to other violation, of Civil Service rules. You will be interested to learn that Management, at different times during the processing of each of our grievances, has sought to justify untenable positions it has taken by alleging that its authority came from you or your office.

We respectfully request that you review both our grievances. We stand ready to prove each and every statement made by us in this memo. We respectfully request that you renew our wavering confidence in the Department's ethical standards, in the Department's willingness to abide by its own rules and instructions as well as those of the Civil Service Commission, and in the Civil Service Merit System in general.

/s/ W. Handler

/s/ Richard P. Burdette

Attachment

[Filed Nov. 15, 1965]*
[Plaintiff's Exhibit No. 5]

U.S. DEPARTMENT OF LABOR
Office of the Secretary
Washington

June 29, 1962

MEMORANDUM TO: W. Handler, Compliance Officer, BLMR
Richard P. Burdette, Compliance Officer, BLMR

I have your memorandum of the Secretary about grievances filed by you.

I understand the Bureau of Labor-Management Reports is in the process of decentralizing to the extent that only two Compliance Officers, one GS-13 and one GS-12, will remain in the District of Columbia. This action will obviously have an effect upon your grievances.

I am therefore awaiting this action before going into your memorandum in detail with the Secretary.

/s/ Stephen N. Shulman
Executive Assistant
to the Secretary

* Footnote page 140 above.

[Filed Nov. 15, 1965]*
[Plaintiff's Exhibit No. 6]

July 10, 1962

MEMORANDUM

To: Mr. Stephen N. Shulman
Executive Assistant to the Secretary

From: W. Handler, Compliance Officer, BLMR
Richard P. Burdette, Compliance Officer, BLMR

Subject: Grievances, Your Memo of June 29, 1962.

On June 24, 1962, we wrote to the Secretary about our grievances. Your answer of June 29 states that BLMR is currently decentralizing still further, that this will obviously have an effect upon our grievances, and that you are therefore awaiting the completion of this decentralization before going into our memo in detail with the Secretary.

All of the considerable evidence available to us indicates that rather than being an incidental by-product of the current "decentralization", the obvious effect upon our grievances that you mention is the very objective for which the "decentralization" is specifically designed. This being the case, one wonders about the bona-fides of the "decentralization", and whether the best interests of the Department are served by it.

We therefore respectfully submit these comments, with offer of substantiation, for whatever immediate consideration you deem appropriate. Note also that our grievances were filed over a year ago, that Handler is in his tenth week of involuntary non-pay status, and that Burdette's current work detail has already exceeded the limits allowed by the Federal Personnel Manual and by the Civil Service Commission.

Respectfully,

/s/ W. Handler

/s/ Richard P. Burdette

* Footnote page 140 above.

[Filed Nov. 15, 1965]*

[Plaintiff's Exhibit No. 7]

U.S. DEPARTMENT OF LABOR
Bureau of Labor-Management Reports
Washington 25, D.C.

May 14, 1962

REGISTERED MAIL
RETURN RECEIPT REQUESTED

Mr. Wilfred Handler
Post Office Box 1052
Baltimore 3, Maryland

Dear Mr. Handler:

This is to notify you that it is proposed to remove you from the position of General Investigator GS-12, \$9215 per annum, in the Detroit, Michigan Area Office of the Bureau of Labor-Management Reports of the Department of Labor, on the basis of the following charge which is hereby preferred against you as reason for removal in the interest of promoting the efficiency of the service.

CHARGE: Failure to accept a new assignment.

SPECIFICATION: On March 22, 1961, you were informed that your post of duty was changed from Washington, D.C. to Chicago, Illinois. You requested that it be changed to Cleveland, Ohio, and this was done on March 23, 1961. On April 11, 1961, but prior to your reporting date in Cleveland, your post of duty was changed to Detroit, Michigan, to be effective April 30, 1961. Subsequent to that time, you were placed on annual and sick leave at your request and given a later reporting date to Detroit.

This reporting date was stayed when you filed a grievance on June 7, 1961. Your reassignment was stayed again on October 12, 1961, when you petitioned the Secretary for a review of your grievance. After the Secretary affirmed your reassignment, you were directed by a

* Footnote page 140 above.

memorandum of April 23, 1962 to report to the Area Director, Detroit, Michigan, on May 7, 1962.

On May 3, 1962, I reaffirmed your reassignment and enclosed your copy of the Notification of Personnel Action, SF-50, showing your new duty station to be Detroit. I also told you failure to report as directed would result in your being carried absent without leave. Both points were stated again in the memorandum from Mr. John C. Shinn on May 4, 1962.

You failed to report to the Area Director in the Detroit Area Office on May 7, 1962.

On May 8, 1962, I wrote you a letter directing that you report immediately to the Detroit Area Office and I pointed out the fact that if you did not comply, I would be forced to propose your removal for failure to report to your assigned duty station.

As of the writing of this letter, you still have not reported for duty to the Detroit Area Office.

You have the right to answer this charge personally and in writing, either with or without the assistance of a representative of your own choosing, and to furnish affidavits in support of your answer. If you wish to answer the above charge personally, but not in writing, or if you wish to answer the charge personally before preparing your written answer to it, you must so state by letter to me immediately, not later than three calendar days after the day you receive this letter. If you wish to answer the charge personally after answering it in writing, instead of before, you must so state in your written answer to the charge. You will have ten calendar days after the day you receive this letter in which to make written answer to the charge. Your written answer should be addressed to me. If you ask for an opportunity to answer the charge personally, you will be advised of the time and place for your personal reply.

After your answer to the above charge has been considered, or after expiration of the ten day limit if you do not answer, you will be notified

in writing of the decision in your case. Pending that decision, you will be in full pay status and in duty status if you report to your duty station in Detroit, Michigan. If you do not report to Detroit, you will be carried as being absent without leave unless you request leave and have the request approved either by your Detroit supervisor or by Mr. John Shinn in my office.

Very truly yours,

/s/ John L. Holcome
Commissioner

[Filed Nov. 15, 1965]*
[Plaintiff's Exhibit No. 8]

May 22, 1962

To: Mr. John L. Holcombe
Commissioner

From: W. Handler
Compliance Officer

Subject: Your letter dated May 14, 1962

My Dear Mr. Commissioner:

This is not my answer to your letter of May 14, 1962; it is a request for additional information, and for clarification. Before I can answer your letter, which advised me of a charge preferred against me and of your proposal to remove from the position of General Investigator, I require clarification regarding the following matters:

1. The exact charge preferred against me.
2. My exact status during the present "notice period."
3. The inconsistency between your memo to Richard P. Burdette, dated May 8, 1962, and your letter to me dated May 14, 1962, advising

* Footnote page 140 above.

me of your proposal to remove me. (You will recall, of course, that I represent Burdette.)

Discussion:

Item #1: Mr. James T. Murphy's memo of September 20, 1961, to Mr. David E. Christian regarding my grievance, Subject: "Transcript of Hearing — Rewrite of Summation", concludes with the following sentence: "The Bureau of Labor-Management Reports believes that the transfer of function was the case in this matter, . . ." (underlining supplied). Page S-1-17 of the Federal Personnel Manual provides that the appropriate action, regarding an employee's "failure to accompany his position in such a transfer of function" is "Separation — Failure to Accompany Activity to (Detroit, Michigan)."

So that I may defend myself against the charge you are preferring against me, please advise explicitly whether I am being removed or separated, and whether the charge against me is "Failure to Accept New Assignment" or "Failure to Accompany Activity to (Detroit, Michigan)". Please explain fully.

Item #1 and 2: The charge you prefer against me is at variance with your statement as to my status during this present "notice period." You state that I will be kept in full pay status and in duty status only if I report to my "duty station in Detroit" (only if I accept my new assignment). You are thus advising me that I may retain my duty status during the notice period only if I act in a manner to remove the charge preferred against me. You propose to remove me for "failure to accept a new assignment", you advise that I may retain my duty status during this "notice period" only if I accept the new assignment. This is in violation of Chapters S-1 and Z-1 of the Federal Personnel Manual.

Stated another way — the Federal Personnel Manual provides that separation for Failure to Accept New Assignment shall be treated as a Separation; the Manual provides also that in Separation proceedings, the employee must be retained in a duty status during the "notice period."

The latter provision of the Federal Personnel Manual obviously contemplates duty at the employee's old duty station, because if he reported to his new duty station, the charge "Failure to Accept New Assignment" would not be applicable.

From the description, immediately above, of the variance between your charge against me, and your statement as to my status during the "notice period", it can be seen that the charge preferred against me, as well as my present status, both need explicit clarification. Please explain fully.

Item #3: The Committee's majority report in Burdette's grievance bases its recommendation on two findings (Farrell and Albamonte). These factors are equally applicable to my case, as is the entire majority report. The Burdette Committee's minority report is also as applicable to me as it is to Burdette. In fact, to the best of my knowledge, every fact presented to the Burdette Committee, regarding Burdette's change in post of duty, is equally applicable to the change in my post of duty.

In your memo of May 8, 1962, to Burdette, concerning your failure, after you had received the Burdette Committee's recommendation, to make a timely decision in Burdette's case, you say: "In view of the complexity and scope of the matters here involved, and the extensive record created during the hearing, I will be unable to complete my review and consideration of all aspects of the case . . ."

You have not, to date, rendered your decision regarding Burdette's transfer from Washington. Because all the matters involved in Burdette's transfer, and in Burdette's hearing regarding his transfer, are as applicable to me as they are to Burdette, and because, regarding your failure to decide Burdette's case, you state: ". . . I will be unable to complete my review and consideration of all aspects of the case . . .", please advise how you are in a position to recommend my removal. Without further explanation from you, it would appear that either:

(a) You are recommending my removal even though you have been: " . . . unable to complete (your) review of all aspects of the case . . . "; or

(b) You have in fact completed your review of all aspects of the case (applicable to both Burdette and me), but, for reasons known best to yourself, and for reasons other than the ones you have given Burdette (and me, as Burdette's representative), you refuse to make a timely decision in Burdette's case — you refuse to abide by Departmental Rules as stated in Personnel Instruction No. 6.

Please comment fully on items (a) and (b) immediately above.

Regarding the due date of my answer to your letter of May 14, 1962:

(1) I request that the due date of my answer be extended one day, in order to compensate for my time in answering your Mr. Moore's memo of May 17, 1962.

(2) I request that the running of time regarding the due date of my answer be suspended, beginning with the day this memo is delivered to your office, and ending with the day I receive your written reply to this memo. In order that the latter date be established beyond dispute, please reply by registered mail.

If I fail to receive a written answer by the second work day following delivery of this memo to your office, I will assume that you agree to items (1) and (2) immediately above.

Respectfully,
/s/ W. Handler

[Filed Nov. 15, 1965]*

[Plaintiff's Exhibit No. 9]

U.S. DEPARTMENT OF LABOR
Bureau of Labor-Management Reports
Washington 25, D.C.

June 6, 1962

REGISTERED MAIL
RETURN RECEIPT REQUESTED

Mr. Wilfred Handler
Post Office Box 1052
Baltimore 3, Maryland

Dear Mr. Handler:

This cancels my letter of May 14, 1962, a copy of which is enclosed.

This is to notify you that it is proposed to separate you from the position of General Investigator GS-12 , \$9215 per annum, in the Detroit, Michigan Area Office of the Bureau of Labor-Management Reports of the Department of Labor, on the basis of the following charge which is hereby preferred against you as reason for separation in the interest of promoting the efficiency of the service.

CHARGE: Failure to accompany your activity to Detroit, Michigan.

SPECIFICATION: In a staff meeting on or about October 10, 1960, Assistant Commissioner Daniel L. O'Connor informed the Division of Financial Investigations that in the near future the work of the Division would be decentralized out of the national office and added to that of the field offices. This was confirmed and elaborated upon in my Bureau Circular No. 41 issued February 24, 1961.

As a part of this decentralization, your post of duty was changed to the Area Office, Detroit, Michigan with a reporting date of April 30, 1961. Prior to April 30, 1961, you were placed on annual leave and sick leave at your request and given a later date for reporting to Detroit.

* Footnote page 140 above.

This date was stayed on June 7, 1961 when you filed a grievance relative to having your post of duty assigned out of Washington, D.C. After the Secretary affirmed that your post of duty was Detroit, you were directed by a memorandum of April 23, 1962 to report to the Area Director, Detroit, Michigan on May 7, 1962.

In a memorandum dated May 1, 1962, you stated that you would not report to Detroit as directed.

In my memorandum dated May 3, 1962, I reaffirmed your change in post of duty and enclosed your copy of Notification of Personnel Action, SF-50, and travel authorization. I also told you that failure to report as directed would result in your being carried absent without leave.

In your memorandum of May 4, 1962, you again stated your refusal to report to Detroit as directed.

In his reply of May 4, 1962, Mr. John C. Shinn again told you to report to Detroit May 7, 1962 and that failure to do so would result in your being carried as absent without leave.

You failed to report to the Detroit Area Office on May 7, 1962.

On May 8, 1962, I wrote you a letter directing that you report immediately to the Detroit Area Office and I pointed out that if you did not comply, I would be forced to propose your removal for failure to report to your assigned duty station.

As of the writing of this letter, you still have not reported for duty to the Detroit Area Office.

You have the right to answer this charge personally and in writing, either with or without the assistance of a representative of your own choosing, and to furnish affidavits in support of your answer. If you wish to answer the above charge personally, but not in writing, or if you wish to answer the charge personally before preparing your written answer to it, you must so state by letter to me immediately, not later than three calendar days after the day you receive this letter. If you wish to answer the charge personally after answering it in writing, instead of before, you must so state in your written answer to the charge.

You will have ten calendar days after the day you receive this letter in which to make written answer to the charge. Your written answer should be addressed to me. If you ask for an opportunity to answer the charge personally, you will be advised of the time and place for your personal reply.

After your answer to the above charge has been considered, or after expiration of the ten day limit if you do not answer, you will be notified in writing of the decision in your case. Pending that decision, you will be in full pay status and in duty status if you report to your duty station in Detroit, Michigan. If you do not report to Detroit, you will be carried as being absent without leave unless you request leave and have the request approved by Mr. John C. Shinn in my office.

Should you desire additional information Mr. Albert L. Moore, Jr. may be contacted in Room 801, American National Bank Building, Silver Spring, Maryland. Mr. Moore's telephone number is extension 400. If Mr. Moore should be unavailable, Mr. John C. Shinn may be contacted in Room 801-B, telephone extension 402.

Very truly yours,

/s/ John L. Holcombe
Commissioner

Enclosure

[Filed Nov. 15, 1965]*
[Plaintiff's Exhibit No. 10]

To: Mr. Wilfred Handler Date: June 7, 1962
P. O. Box 1052
Baltimore 3, Maryland

From: John L. Holcombe
Commissioner

This is in reply to your memorandum of May 22, 1962, asking questions about my letter of May 14, 1962.

I have cancelled my letter of May 14, 1962 by the issuance of one dated June 6, 1962. This letter also proposes your separation but the charge is stated in a manner which should eliminate the doubt expressed in your May 22 memorandum. In answer to your specific question, if the proposed separation takes effect, the Notification of Personnel Action SF-50, in Item No. 12, would read "Separation - Failure to Accompany Activity to Detroit, Michigan", as prescribed by Chapter R-1 of the Federal Personnel Manual.

Your status during the notice period is that described in my letter of June 6, 1962, and is no different from that described in my previous letter. You have been provided with travel orders enabling you to proceed to Detroit at Bureau expense. You can refuse the reassignment on a permanent basis but you can accept it on a temporary basis in order to be in a duty status during the notice period.

I am able to proceed with your action as your case has been through all of the appropriate steps and the Secretary has determined that your movement to Detroit is in the best interests of the Department. In Mr. Burdette's case, there are a number of issues involved; the Committee found it necessary to render both a majority and a minority report; the Committee reports do not include specific recommendations; and no determination has been made yet.

* Footnote page 140 above.

[Filed Nov. 15, 1965]*

[Plaintiff's Exhibit No. 12]

MEMORANDUM

June 12, 1962

To: Mr. John L. Holcombe, Commissioner
Through: Mr. Albert L. Moore, Jr., Assistant Commissioner
From: W. Handler, Compliance Officer

Dear Mr. Commissioner:

Your memo of June 7, 1962, is unsatisfactory. But, because it appears obvious to me that the inadequacy of your memo is by design, I believe extensive discussion herein of the entire memo would be futile. I shall discuss now, in some detail, only the third paragraph of your memo; I shall refer, only briefly, to just one aspect of the last paragraph of your memo.

I quote two sentences from the third paragraph of your memo: "You have been provided with travel order enabling you to proceed to Detroit at Bureau expense. You can refuse the reassignment on a permanent basis but you can accept it on a temporary basis in order to be in a duty status during the notice period." (underling supplied). With all due respect, Mr. Commissioner; your reasoning eludes me.

The Federal Personnel Manual clearly indicates that I must be kept in a duty status during the notice period, if I refuse the reassignment. (See my memo of May 22, 1962.) But you state that I must ". . . accept it on a temporary basis in order to be in a duty status during the notice period". Refusing is hardly synonymous with accepting, temporary or otherwise, is it, Mr. Commissioner? Also, the following specific questions come to mind:

1.(a) Inasmuch as I have previously expressed surprise, and natural concern, over my non-pay status during the notice period, why did you not advise me sooner of the manner in which I might "refuse" the reassignment, but nevertheless effect a duty status during the notice period?

* Footnote page 140 above.

(b) In view of your failure to advise me sooner, am I entitled to reimbursement for my present non-pay status, which began May 7, 1962?

2.(a) What is your authority for holding that, to be in a duty status, I must "accept it on a temporary basis"? — i.e., Civil Service and/or Departmental rules or regulations, advice from specific individuals in the Office of Personnel Administration.

3. If I should choose to "accept it on a temporary basis" only, what would be the specific mechanics involved?

(a) What, specifically, must I do now?

(b) What, specifically, must I do after reporting to Detroit?

(c) What, specifically, will management do? — when?

4. Will the charge you have preferred against me stand, or will not my reporting to Detroit make the charge inappropriate?

5.(a) As Detroit will not be my permanent post of duty, will I be in a per diem status while in Detroit?

(b) If not, why?

6. My present travel orders authorize movement of household goods from Washington, D. C. to Detroit, Michigan. Would this still be permissible if I "accept it on a temporary basis"? If not, why?

7. (a) Will I subsequently be issued travel orders enabling me to return, and to return my household goods, at Bureau expense, from Detroit to Washington?

(b) If not, why?

(c) If so, when?

Regarding the last paragraph of your memo of June 7, 1962:

8.(a) You state, in the last paragraph of your memo: "... the Secretary has determined that your movement to Detroit is in the best interests of the Department . . ." I was not aware that the Secretary had so determined. Please be good enough to furnish specific details, with documentary evidence?

(b) Your letter of June 6, 1962, preferring charges against me, is relevant at this point. In your letter of June 6, you state: "After the Secretary affirmed that your post of duty was Detroit, you were directed by memorandum of April 23, 1962 (from Mr. Kleiler, Acting Commissioner of BLMR) to report to the Area Director, Detroit, Michigan on May 7, 1962". I was not aware that the Secretary had so affirmed. Please advise me, specifically, how and when the Secretary affirmed, before April 23, 1962, that my post of duty was Detroit? Please furnish documentary evidence?

Until I receive a satisfactory answer to this memo, particularly to item #8(b) immediately above, I shall assume that the running of time is suspended, regarding the due date of my answer to your letter of June 6, 1962. If I fail to receive an answer by the second calendar day after delivery of this memo to Mr. Moore's office, I shall assume that you agree with the preceding sentence.

Because I am currently not being paid, and because you are being paid and the Government assumedly needs your talents on other matters, I respectfully, but urgently, request an early answer. I remind you also, that it is now over a year since I filed a grievance regarding my reassignment out of Washington, D.C.

Respectfully,

/s/ W. Handler

[Filed Nov. 15, 1965]*
[Plaintiff's Exhibit No. 13]

MEMORANDUM

June 21, 1962

To: Mr. John L. Holcombe, Commissioner
Through: Mr. Albert L. Moore, Jr., Assistant Commissioner
From: W. Handler, Compliance Officer

Dear Mr. Commissioner:

This is a 2 page memo. I have signed each page. Because I believe they are well known to you and/or your office, I will not enumerate here my reasons for writing this memo. I submit the following data regarding the status of your letter to me, dated June 6, 1962:

1. Your registered letter of June 6, 1962 (Registered Mail, #5233), notifying me of your proposal to separate me from my position of General Investigator, was received by me on June 7, 1962; at that time, at the request of the post office, I signed two (2) forms attesting to my receipt of the letter. The post office advises me that one of these receipts is on file in their records, and that they have so advised you. The other receipt was presumably mailed to you, by the post office, in the normal course of its business.

2. My memo to you dated June 12, 1962, asks questions about certain flaws in your letter of June 6 and in your memo of June 7, 1962. These flaws, and your failure, to date, to answer my questions about them, have made it impossible for me to answer your letter of June 6, 1962.

3. Even in the absence of pertinent rules or regulations, your delay in answering my questions of June 12 would make it desirable that you cancel your letter of June 6, 1962, and that you replace it with a new notice of your proposal to separate me. But the cancellation of your notice of June 6, 1962, and the submission of a new notice, are not

* Footnote page 140 above.

only desirable, they are mandatory — see Chapter S-1 of the Federal Personnel Manual, and see the Department's Personnel Instruction No. 30.

In short, in order that I may answer, as a single entity, your notice of proposal to separate me, and in order that I may have reasonable time to answer, I respectfully direct your attention to the Federal Personnel Manual's requirement that you cancel your letter of June 6, 1962 (There is good reason to believe that you presently contemplate circumventing this requirement.)

And once again I remind you, I am not in a pay status — please expedite this matter, Mr. Commissioner.

Respectfully,

/s/ W. Handler

[Filed Nov. 15, 1965]*

[Plaintiff's Exhibit No. 14]

U.S. DEPARTMENT OF LABOR
Bureau of Labor-Management Reports
UNITED STATES GOVERNMENT
MEMORANDUM

REGISTERED MAIL —
RETURN RECEIPT REQUESTED

Date: June 28, 1962

To: Mr. Wilfred Handler
P. O. Box 1052
Baltimore 3, Maryland

From: John L. Holcombe
Commissioner

Subject: Your memoranda of June 12 and June 21, 1962

* Footnote page 140 above.

The following answers are keyed to the questions in your memorandum of June 12, 1962:

1.(a) My memorandum to you of May 3, 1962 and Mr. Shinn's memorandum of May 4, 1962 told you to report to Detroit, May 7, 1962, and that failure to do so would result in your being carried as absent without leave. The letter of charges to you of June 6, 1962 stated that pending a decision, "you will be in full pay status and in duty status if you report to your duty station in Detroit, Michigan." There is no obligation to tell an employee what to do when he is unwilling to carry out an order.

(b) You are not entitled to reimbursement for the period beginning May 7, 1962 as you were and are, absent without leave by your own choice.

2.(a) The Director of Personnel is the authority for the statement that you can be in a duty and pay status only if you report to Detroit, Michigan.

3.(a) If you choose to accept the assignment on either a permanent or a temporary basis, you should so notify me in writing and report to the Area Director in Detroit, Michigan.

(b) After reporting, you would be expected to carry out your assignments as given to you by your supervisor in the Detroit Area Office.

(c) Management will continue to carry out its responsibilities for the Bureau program.

4. The charge against you will stand unless you assume your duties in Detroit, Michigan on a non-temporary basis.

5.(a) By official personnel action documented on SF-50, your duty station is Detroit, Michigan, and you would not be entitled to per diem after your arrival at Detroit except when on temporary duty at points outside of Detroit in accordance with travel regulations.

(b) Regardless of your personal decision, official management action has changed your permanent post of duty to Detroit, Michigan and regulations prohibit payment of per diem for duty at the employee's official station.

6. The travel authorization issued you in connection with the permanent change in your post of duty authorizes, among other things, your travel and transportation of household goods from Washington, D. C. to Detroit, Michigan for the purpose of "change of official station." This part of the authorization is valid only for the purpose stated. If you accept the Detroit assignment on a temporary basis, a new authorization for only your travel to Detroit, and subsequent travel out of Detroit on official duty, would be issued.

7.(a)(b)(c) If leaving Detroit is by your choice and not for the purpose of performing official duty under proper orders, the Government would not be responsible for the costs of any such travel.

8.(a) The Secretary's decision stated that if a canvass of positions in the Bureau of Labor-Management Reports and the Department of Labor to determine whether there were any vacancies available for which you might be qualified, did not result in a new assignment, the Bureau of Labor-Management Reports should assign you to a position where there is a need for your services. Since there were no vacancies in the Washington, D.C. - Maryland area for which you were qualified, and your services were still needed in Detroit, you were then assigned to the Detroit Area Office.

(b) The Standard Form 50 "Notification of Personnel Action" indicating that your post of duty is Detroit is an official action of the Secretary of Labor in accordance with his delegation of authority to the Director of Personnel.

In reply to your memorandum of June 21, 1962, the 10 calendar day period for reply is recommended by the Federal Personnel Manual. The letter of charges of June 6, 1962 is in conformity with the requirements of the Federal Personnel Manual. There is no mandatory requirement in the Federal Personnel Manual that the letter of June 6, 1962 be withdrawn.

The 10 calendar day period during which you can make a written reply to the letter of charges is considered to have run through June 11,

1962 and will be considered to resume on the calendar day after you receive this memorandum.

[Filed Nov. 15, 1965]*
[Plaintiff's Exhibit No. 15]

July 5, 1962

To: Mr. John L. Holcombe, Commissioner
Through: Mr. Albert L. Moore, Assistant Commissioner
From: W. Handler, Compliance Officer

Dear Mr. Commissioner:

This is a 6 page memo. I have signed each page.

This is not my answer to the charges you have preferred against me. You have not adequately stated your charges. The charges should be altered or replaced, and a new period of 10 or more days should then be allowed me in which to answer the charges.

Although my present non-pay status is now in its ninth week, I am still unable to ascertain the specifications of the charges against me. Not only is your letter of charges of June 6, 1962, inadequate, it is altered, rather than merely amplified, by your memos of June 7 and June 28.

Altered as they are, however, the charges preferred against me remain inaccurate; they should, at this time, be altered again, or, preferably, replaced. And even if they are not altered or replaced at this time, a new period of 10 or more days in which to answer the charges should be granted me, as the current period relates to your letter of charges of June 6, 1962, recognizing neither the changes effected by your memos of June 7 and June 28, nor new circumstances regarding my Travel Authorization, discussed below.

The difficulties discussed herein stem from the evasiveness of

* Footnote page 140 above.

your memo of June 28, 1962; from your slippery and elusive language, your inconsistencies, your misrepresentations, your hedging — in short, from your aversion to the use of plain, forthright, unequivocal language. Almost your entire memo of June 28 is objectionable; for several reasons, however, including time limitations, I limit myself to the following observations:

1. Your letter of charges of June 6, 1962, states that before I was advised by memo of April 23, 1962, to report to Detroit on May 7, the Secretary had affirmed that my post of duty was Detroit. In my memo to you of June 12, 1962, I requested particulars regarding the Secretary's aforementioned affirmation prior to April 23, 1962. In Item #8(b) of your memo of June 28, 1962, you give me your answer: namely, the Secretary's affirmation was by means of Standard Form 50.

But the change of my duty station to Detroit, effective May 6, 1962, is documented by a Standard Form 50 dated April 26, 1962. I believe you will agree, Mr. Commissioner, that April 26, 1962, is after rather than before April 23, 1962. For this reason, and others which time does not permit me to discuss, in your letter of June 6, 1962, in citing the Secretary's affirmation, before April 23, 1962, of Detroit as my post of duty, you could not have had Standard Form 50 in mind.

Whether you choose merely to amplify, or to replace, your letter of charges of June 6, 1962, please advise me specifically what you had in mind when, in that letter, you said: "After the Secretary affirmed that your post of duty was Detroit, you were directed by memorandum of April 23, 1962 to report to the Area Director, Detroit, Michigan on May 7, 1962." The answer you give in Item #8(b) of your memo of June 28, 1962, is incredible.

2. I do not have a Travel Authorization enabling me to report to Detroit. The Travel Authorization previously furnished me, dated April 23, 1962, expired on June 30, 1962.

Another problem exists, besides the expiration date of my Travel Authorization. Regarding the applicability of my current Travel Author-

ization to my move to Detroit, your memo of June 7, 1962, is in conflict with Item #6 of your memo of June 28, 1962:

Your memo of June 7 indicates that my current Travel Authorization would be applicable whether I accept Detroit as a permanent or a temporary assignment, whereas your memo of June 28 states that in the event I accept Detroit only as a temporary assignment, a new Travel Authorization would be issued. In accordance with your latest position on this point (your memo of June 28) please furnish me, at once, with two Travel Authorizations, one for a permanent and one for a temporary move to Detroit. If I should decide to report to Detroit, as you say I must in order to be in a pay status, I would not want my pay status deferred while I wait for Travel Authorization to be issued.

3. You have not yet adequately informed me of my status during the notice period. Should I stipulate that my reporting to Detroit is on a temporary basis only, it appears to me that the ultimate termination of my services would be voluntary on my part. You apparently share this view — see Item #7 of your memo of June 28, 1962.

In the event I should choose to report to Detroit on a temporary basis only, Item 3(a) through 3(c) of my memo of June 12, 1962, was intended to define specifically what I should do, and specifically what management would do, and when, in order to establish the following:

- (a) The temporary nature of my acceptance of the assignment.
- (b) My ultimate separation date.
- (c) The involuntary nature of my ultimate separation despite the fact that it is requested and stipulated by me.

Obviously, Item 3 of your memo of June 28, 1962, does not furnish this information; Items 3(b) and 3(c) tell me absolutely nothing. (It would probably be more accurate to say that Item 3(c) of your memo of June 26, 1962, is a misstatement.) Should I report to Detroit on a temporary basis, therefore, I do not know what my status would be during the notice period, nor what the nature of my ultimate separation would be.

Another reason for the doubt as to my status during the notice period is the discrepancy between Item 5(b) and Item 6 of your memo of June 28, 1962. If I accept the Detroit assignment on a temporary basis only, is Detroit my permanent post of duty (Item 5(b)), or is it not (Item 6)?

Departmental Personnel Instruction No. 30 (E-17, March 6, 1961) provides in effect that I must know my status during the notice period before I answer the charges preferred against me. I consider this particularly essential in this case.

Until I receive Travel Authorization, and/or until you respond to Item #3 of this memo, I am unable to assume a pay status; I respectfully request that you take immediate action. Regarding the other matters discussed herein, if I do not receive an answer by the third work-day following delivery of this memo to Mr. Moore's office, I shall assume that I will thereafter receive a new letter of charges as quickly as possible.

I respectfully remind you again, Mr. Commissioner, that I have now been in a non-pay status for about 9 weeks; I have not yet received a letter of charges complete and accurate and non-contradictory enough to answer.

Respectfully,

/s/ W. Handler

[Filed Nov. 15, 1965]*
[Plaintiff's Exhibit No. 16]

U.S. DEPARTMENT OF LABOR
Bureau of Labor-Management Reports

UNITED STATES GOVERNMENT

MEMORANDUM

REGISTERED MAIL —
RETURN RECEIPT REQUESTED

July 18, 1962

To: Mr. Wilfred Handler
P. O. Box 1052
Baltimore 3, Maryland

From: John L. Holcombe
Commissioner

Subject: Your memoranda of July 5 and July 12, 1962

My letter of June 6, 1962 proposing your separation contains a clear statement of the charge. The ten calendar day period during which you may make written reply to this letter began on June 8, 1962, the day after you received my letter, and ran for four days through June 11, 1962. The calendar day count resumed on June 30, 1962 and ran for five days through July 4, 1962. The count will resume again on the day following that on which you receive this memorandum and that day will end the ten calendar day period. The interruptions to the running of the ten days have been permitted as a result of your requests for additional and clarifying information. Inasmuch as only one day remains and as no further interruptions will be allowed, I am extending the written reply period by two calendar days, allowing you three days after receipt of this memorandum.

The following comments are keyed to the questions in your memorandum dated July 5, 1962:

1. The referenced statement summarizes a chain of events beginning with the recommendations approved by the Secretary on March 30,

* Footnote page 140 above.

1962, which did not overturn my decision of October 9, 1961 assigning you to Detroit, and ending with the facts stated in the first paragraph of Mr. Keller's memorandum of April 23, 1962.

2. The June 30, 1962 expiration of the travel authorization issued through the standard administrative process on all "change-of-station" personnel actions, does not prohibit you from going to Detroit. Adequate documentation exists of the fact that you are expected to go to Detroit, and travel may be "approved" after the fact as well as "authorized". If you go to Detroit, otherwise proper travel expense claims will be approved and paid. The conditions of Item No. 6 in my June 28, 1962 memorandum apply. When you have decided and advised us what you will do, Mr. Moore's office will assure that appropriate steps are taken. You need not wait for any authorization, and there will be no delay in restoring you to pay status.

3. The letter of June 6, 1962 clearly states your status during the notice period in terms of reporting to Detroit and not reporting to Detroit. Acceptance of the reassignment on a temporary basis so as to be in a pay status, in no way affects the charge, the notice period, or the ultimate course of the action. If you report to Detroit, it becomes — for travel purposes — your permanent duty station.

[Excerpts From Government Exhibit B]

[Proceedings in the Civil Service
Commission; September 10 and 12, 1962]

[Submitted to Judge: Dec. 15, 1965;
Filed with Clerk of Court: Jan. 10, 1966]

* * *

[2] Whereupon,

WILFRED HANDLER [Appellant, pro se]

HAROLD E. FINNEGAN [Dep't. of Labor Representative]

were duly sworn by the Appeals Examiner.

APPEALS EXAMINER: Would you state, for the record, Mr. Handler, your present home, mailing address:

MR. HANDLER: Post Office Box 1052, Baltimore 3, Maryland.

APPEALS EXAMINER: I hand you the Commission's file in your case, Mr. Handler, and I would like for you to state for the record, whether or not you have had an opportunity to review that file.

MR. HANDLER: Without even turning a page, the answer is yes. I can't say I have seen everything in here.

APPEALS EXAMINER: Have you come to the Commission's office and was the file handed to you for your review?

MR. HANDLER: Yes, it was.

* * *

[9] [Mr. Handler:] *** Now, I make reference to Chapter X-4 of the Federal Personnel Manual, Page X-4-1, and I will read the first sentence. Purpose. This chapter outlines the assistance given by the Commission to help place employees who have been involuntarily separated or furloughed by reduction in force, separated or resigned for failure to accompany a transferred function or failure to accept a new function at another commuting area.

Now, there is designated the type of person who is entitled to the benefits under this program. Employees who have been involuntarily

separated or furloughed because of reduction in force, separated or resigned for failure to accompany a transferred function. I would fall into that category, had I been separated as Commissioner Holcombe said I would be and the third one is failure to accept a new assignment at another commuting area.

Now, as opposed to this preferred status, actually, the stigma of a removal is attached to me. Removal is [10] usually associated with misconduct and removal is the terminology used, according to the manual, to describe a separation that does not fit into any of the other specific categories enumerated in Chapter R-1.

Now, page R-1-34.19 of the Federal Personnel Manual states -- let me repeat that page number. R-1-34.19 and that is installment 3, dated May 1, 1962.

Now, here, the manual gives instructions for completing a form 50, SF 50, and they have one item here 346 - Removal. 346 is the code number. Removal is the action, and that is exactly the way Item 12 of my SF 50 reads. 346 - Removal.

Now, they describe what comments or detailed explanation on the SF 50 is required to explain 346 - Removal. Let me read what they say about that.

"A general statement, such as the letter of charges, dated 1-5-61, misconduct, excessive absenteeism, insubordination, is not in sufficient detail. Describe, briefly, the nature and extent of the employee's actions that caused the separation. For example, the employee was arrested and booked on charges of disturbing the peace and obstruction of property, jailed overnight. His name and the charges against him were reported by a newspaper" and they go on in that strain. This is the type of thing covered by removal, whereas, as I have pointed out, a separated employee, [11] an employee that is separated for failure to accompany an activity to another city, has a preferred status. He is entitled to benefits under the separated career employee program. It was told to me, specifically, that that would be the action taken. I

wonder, at this point, why this mistake was made, and I use the word mistake, with quotes. It should be surrounded with quotes.

[26] MR. HANDLER: Now, in the memorandum of July 18, 1962, the Commissioner, Commissioner Holcombe, is again trying to tell me what he meant in the letter of June 6, proposing my separation when he says that the Secretary had affirmed that my post of duty was Detroit. You remember that he has already told me it was the Standard Form 50 that he meant, and I have already told him he couldn't have meant that because it had the wrong date.

Item 1 in the memorandum of July 18, and I will read it. "The reference statement summarizes a chain of events, beginning with the recommendations approved by the Secretary on March 30, 1962, which did not overturn my decision of October 9, 1961, assigning you to Detroit, and ending with [27] the facts stated in the first paragraph of Mr. Kleiler's memorandum of April 23, 1962".

Now, frankly, I don't know what the man is talking about. He says, "it summarizes a chain of events". I don't know what events.

Now, he gives 2 dates, "summarizes a chain of events which began March 30, 1962 and ended April 23, 1962". Between those 2 dates I received no standard form 50, so he can't be referring to that, as he has already done.

He is not saying that the Secretary's recommendations on March 30, 1962 constitute or represent what he meant when he said in his letter of proposal that the Secretary had affirmed that my post of duty is Detroit. He is not saying that. He said that the Secretary's decision of March 30, 1962, did not overturn his decision, the Commissioner's previous decision assigning me to Detroit. Now, the Secretary's decision that the Commissioner, here, is referring to is the decision on my grievance, and it was a decision not to send me to Detroit. It was a decision saying that the Department should canvass all its bureaus and try to find an opening in Washington for Handler, and the Bureau of Man-

agement should do likewise and if those 2 Agencies did not disclose an opening, I should then be transferred wherever the Commissioner needed me * * *. [28] I think that is plain from the Commissioner's own words, and also from my explanation of what the Secretary's decision of March 30, 1962 was. It was not a proposal that I go to Detroit. In fact, it was directed that a job be found for me in Washington, if there was one, so, that, again, I say, what does this item 1 in the Commissioner's letter of July 18, 1962 — what does it mean? I don't know.

The ultimate answer I get out of it is that he was referring to a chain of events. That is all I get out of it. * * *

[Mr. Handler:] * * * Now, in this memorandum of July 18th, which has this unsatisfactory explanation, as to what is meant in the letter of proposal, I am also advised [29] in the first paragraph that there now remains only one day in which to answer the proposal. Commissioner Holcombe is relating back to the letter of June 6th. I had 10 days, according to Departmental regulations to answer that proposal. The run of that time was stopped while we exchanged correspondence and resumed again at the proper time, and now he advises there is only one day left. I received this letter of July 18th on a Friday so that if I answered in the one remaining day, the answer would have been due on Saturday. You will notice that the Commissioner, in the first paragraph says that, inasmuch as only one day remains, and no further interruptions will be allowed, he is extending the written reply period by two calendar days. What that did was extend the due date from Saturday to Monday, which would have happened in any event, so the Commissioner, there, gives me nothing, but the point actually is this, that he is not giving me another 10 days from the last explanation to answer his letter of proposal.

Up until I received the letter of July 18th, I was trying to find out what he meant in his letter of proposal, when he said the Secretary has affirmed that your post of duty is Detroit. I received one answer which was incorrect, obviously, and I received a second answer which told me

absolutely nothing. I can't say it is incorrect, because it didn't tell me anything.

[30] Now, if the Commissioner is trying to tell me, in the letter of July 18, 1962, that he wishes to delete that sentence from his proposal because his explanation is so obviously unsatisfactory, possibly that would have been an acceptable step, but I should have gotten a new 30 days, and a new 10 days in which to answer the letter. Up until this time, I had refrained from answering until I knew what he meant when he said that the Secretary affirmed that my post of duty was Detroit.

I guess we could save a little bit of time if Mr. Finnegan will, in some way concede that the Department of Labor regulations require that an employee receive 10 days in which to answer a letter proposing his separation. The Federal Personnel Manual, I believe, states a reasonable time. It does not stipulate the exact time. The Department of Labor regulations state that an employee will receive 10 days, so I should have gotten 10 days from July 18, 1962, and here I am being advised that I am being allowed 3 days.

APPEALS EXAMINER: Does the Agency representative care to make a comment concerning the Appellant's request for a stipulation that the Department of Labor's own regulations require that an employee receive 10 days in which to answer a letter proposing his separation?

MR. FINNEGANN: Yes, sir, we will so stipulate.

APPEALS EXAMINER: That is what the Department of [31] Labor's regulations require?

MR. FINNEGANN: Yes, sir.

APPEALS EXAMINER: You may proceed.

Lets take a 10 minute recess and resume at 11:00.

* * *

[32] [Mr. Handler:] *** I am sure that the Civil Service Commission had I applied for my rights under the Separated Employees Career Program, would not have considered that removal meant separation.

APPEALS EXAMINER: In that connection I might ask you, Mr. Handler, whether or not you have made application for assistance in finding another job under the Commission's Separated Career Employee program.

MR. HANDLER: On the same day that I personally delivered my appeal to the Commission's office, and I think that was August 13th, I mailed my appeal on August 11th, and to be sure it was received on time, because I did not know whether the Commission was governed by the post mark date or the date of [33] receipt, after mailing my appeal on August 11th, I delivered a copy, personally, on August 13th, and on that date, I went up to the Civil Service Office on E Street, 11th and E, the Separated Career Employee office, and I went through the procedure of applying for a job. I won't say that I had to wait my turn with others that were applying for a job. At any rate I was finally interviewed and I told the Lady who interviewed me, when we were through, I could point her out that I wanted to know what my benefits were under the program, and I told her that I had been removed for failure to accompany my job to Detroit. She handed me some literature and told me this is the program and you can file for two jobs, get preference for two jobs, file an SF 57 for each job, but she said, "You would be wasting your time if you were removed".

I told her I was removed for failure to accompany my position to Detroit and that maybe they had made a mistake in the terminology, and she said, laughingly, "I think if they meant separated, they would have said separated".

* * *

[42] [Mr. Handler:] Now, let me repeat that. The manual says a man who refuses a reassignment is entitled to all of the separation procedures, including being retained in a pay status during the notice period.

Mr. Holcombe, in his memorandum of June 7 states I can refuse

the reassignment on a permanent basis, but accept it on a temporary basis in order to be carried in a duty status during the notice period.

He says I have to accept the assignment to be in a duty status during the notice period, but acceptance on a temporary basis is not the same as refusal, temporary or permanent.

The manual says an employee who refuses a reassignment is entitled to all of the separation procedures, including his retention in a pay status during the 30 day notice.

Mr. Holcombe deviates from that and says in order to be in a duty status during the notice period, I have to accept the reassignment on a temporary basis.

There is another problem in connection with his [43] contention. How would I accept it on a temporary basis. I have been ordered to Detroit. I appear in Detroit. How do I make my appearance a temporary one. As I have said before, -- possibly this is the best time to do it -- the office's correspondence with me indicated what I do governs and what I say is not important. If I appear in Detroit, how do I make it temporary. I was ordered to appear on a permanent basis.

In order to comply with Mr. Holcombe's comments in the second paragraph of his memo of June 7, 1962, I would have to go to Detroit, thereby accepting the reassignment, and then resign.

Actually, I find myself getting into an argument which is actually more appropriate to my status during the notice period, and I think I had better defer that.

MR. DECKELMAN: Mr. Handler, may I make this suggestion, that the memorandum of Mr. Holcombe beclouds your position as to whether you would be in a pay status or not, by going to Detroit.

MR. HANDLER: Yes, it certainly does.

Let me say I was trying to determine in my own mind the relevancy of what I have just been saying to the procedural defects in my removal, and I think this is the answer, without getting into a further discussion which is more relevant to the notice period.

[44] I contend that the manner in which my removal was effected and the correspondence that proceeded it and succeeded it, was actually an attempt to get me to resign.

You see, I had filed a grievance and it was an unpleasant affair which I didn't like, but which I felt was necessary, and I know that the Department didn't like it and they would have preferred that I resign, rather than continue with my attempts to sustain my position, and one of the bases on which I make that statement that they were attempting to get me to resign is this statement of Mr. Holcombe in his letter of June 7, 1962, "You can refuse the assignment on a permanent basis, but you can accept it on a temporary basis, in order to be in a duty status during the notice period". How would I convert my reporting to Detroit in answer to a permanent post of duty to a temporary acceptance to Detroit.

Now, in my memorandum of June 12, 1962, to the Commissioner, page 2, item 3, I said, "If I should choose to accept Detroit on a temporary basis, only, what would be the specific mechanics involved, and (a) what specifically must I do now; (b) what, specifically, must I do after reporting to Detroit; (c) what, specifically, will Management do, and when", and, item 4, in that same memorandum states, "will the charge you have preferred against me stand, or will not my reporting to Detroit make the charge inappropriate"?

[45] Now, what I was attempting to ascertain, here, is, as I say, what must I do to indicate that my reporting to Detroit is not an acceptance of a permanent post of duty, but merely a reporting to be in a duty status during the notice period. How do I indicate that my appearance is not for the purpose given me.

Now, here is Mr. Holcombe's answer to the specific questions that I raised regarding the mechanics involved in accepting the position on a temporary basis in order to remain in a duty status during the notice period.

His answer is in a memorandum dated June 28, 1962 to Handler from Holcombe, and it is in the Commission's record.

Item 3(a) reads, 'If you choose to accept the assignment on either a permanent or temporary basis, you should so notify me in writing and report to the area director in Detroit, Michigan.

Here, he is deviating from what he told me in the past. In the past, what I did and not what I said, is what governed. Here he is saying I should tell him what I proposed to do.

Item 3(b) in the Commissioner's memorandum of June 28th, "After reporting, you would be expected to carry out your assignments as given to you by your supervisor in the Detroit area office, and 3(c) Management will [46] continue to carry out its responsibilities for the Bureau. That is in answer to my questions of what should I do now, and what should I do upon reporting to convert my reporting from a permanent basis to a temporary basis, and what would Management do to acknowledge it was only a temporary, and not a permanent reporting. That is the Commissioner's answer. After reporting, you would be expected to carry out your assignments as given to you by your supervisor, and Management will continue to carry out its responsibilities.

I still did not know, and I don't know now, how I would convert my reporting to Detroit to a temporary one, if, in fact, I reported merely for the purpose of retaining a pay status during the notice period.

Now, item No. 4, in the Commissioner's memorandum of June 28, 1962 states:

"The charge against you will stand unless you assume your duties in Detroit, Michigan on a non-temporary basis". That is in answer to my question asking him would the charge be inappropriate if I should report to Detroit. He says, "The charge will stand unless you assume your duties on a non-temporary basis."

Now, if I reported to Detroit, which was my new post of duty, permanently, how would I make it a non-temporary basis. I still don't know.

[47] Another reason I say there was an attempt to get me to resign --now, of course, this memorandum of June 28, 1962 is just full of inconsistencies and it is hard to make any sense out of them.

For example, in item 5(a), the Commissioner says that if I report to Detroit -- well -- scratch that out, please.

I had asked the Commissioner, in a memorandum, whether, if I reported to Detroit merely to retain a pay status during the notice period, would I be entitled to per diem because it would then be a permanent post of duty, and his answer, in item 5(a) of June 28, 1962, states, "By official personnel action documented on SF 50, your duty station is Detroit, Michigan, and you would not be entitled to per diem, after your arrival at Detroit.

Now, the Commissioner had given me a travel order authorizing transportation of household goods in connection with my permanent change of duty to Detroit. I asked the Commissioner, inasmuch as he had told me I had a travel order usable, either for temporary or permanent acceptance of report, I asked the Commissioner, would payment be made me for transportation of my household goods to Detroit, even though I were to accept on a temporary basis. The Commissioner's answer is in this memorandum of June 28, 1962.

Now, I asked the Commissioner, also, if I chose to go to Detroit to retain my pay status only for the notice [48] period, would my travel back from Detroit be paid me, and his answer in item 7 of the June 28, 1962 memo is "If leaving Detroit is by your choice, and not for the purpose of performing official duty under proper orders, the Government would not be responsible for the cost of any such travel." I repeat. If leaving Detroit is by your choice, which smacks of resignation -- if I went to Detroit merely to accept my post of duty for the notice period, and subsequently were to be separated, would that be leaving my choice? I still didn't know what the Commissioner means here.

Now, to substantiate my contention that the Commissioner is

attempting to get me to resign, the very letter of proposal states that I am absent without leave. The memorandum before that states if I don't report to Detroit, I will be absent without leave. I honestly, at that time, thought that a removal under those circumstances would be a hindrance to my further employment and that it would constitute misconduct. I am clearly told I would be absent without leave, which is misconduct and it made me think about whether or not, maybe, I better resign, rather than be subjected to the charge of being absent without leave, because in these previous memoranda, the Commissioner does not tell me that a person who refuses to accept a reassignment is entitled to a separation which gives him a preferred status. He tells me I will be absent without leave if I [49] don't go to Detroit.

Now, as I told you in connection with my transfer I filed a grievance within the Department of Labor. The grievance was held and then in accordance with the Department's rules, I wished to file an appeal to the Secretary of Labor and I wanted some time off to prepare my appeal. Incidentally, the grievance decision was to the effect that I should be transferred to Detroit, but that the Department should thereupon try to find another opening for me in Washington. Nevertheless, I wished to appeal the decision to the Secretary of Labor.

At that time, in Washington, the Bureau was holding a school for Compliance Officers, and Commissioner Holcombe directed me, in a memorandum, to attend that school.

Now, I told the Commissioner, by memorandum, that inasmuch as I had told him I would not accept the assignment to Detroit, it seemed rather meaningless for me to attend this school, because the Department would not benefit from it unless I were successful in my contention I should not be transferred, and if the Commissioner had any confidence in his decision to transfer me, it was useless to send me to school at that time. I therefore requested I be permitted at that time to have some annual leave in which to write my appeal of my grievance decision.

The Commissioner's answer was, no, you have to go to [50] school. Now, my point is this. The Commissioner told me -- incidentally it is a memorandum dated November 1, 1961, to Handler from the Commissioner, and I would like to submit a copy of that memorandum.

MR. FINNEGANN: May I ask the relevancy? Am I entitled to ask that question?

APPEALS EXAMINER: You will be given an opportunity, Mr. Finnegan, to review the document and make any comments you care to make concerning it.

MR. FINNEGANN: As I understand the issue here, it is the removal or separation, whichever term is appropriate, or both, and not in any way related to the grievance that preceded. Such matter is not appealable to the Civil Service Commission. Therefore, I object to this line of approach.

APPEALS EXAMINER: Do you care to comment concerning the objection raised by the Agency representative?

MR. HANDLER: Yes, I do, Mr. Bates.

I am attempting to illustrate by means of this memorandum, my contention that the Commissioner was trying to coerce me into resigning rather than being removed or separated, and this memorandum will demonstrate, I believe, what I am contending.

APPEALS EXAMINER: I am not sure that the issue which you raise is pertinent to the case, but we will mark the [51] document as your Exhibit No. 2, admitted into evidence. Later on you may be able to explain your connection. We are marking the document just handed to the Examiner as Appellant's Exhibit No. 2

(Appellant's Exhibit No. 2 was marked for identification and retained by the Examiner.)

APPEALS EXAMINER: You may proceed.

MR. HANDLER: I am not sure I understand you, Mr. Bates. You mean I may not discuss, at this time, this memorandum?

APPEALS EXAMINER: Yes, you may discuss the memorandum. I am not sure that your contention, though, is pertinent to the issues in this case.

MR. HANDLER: Is it not pertinent for me to allege that the Commissioner was trying to coerce me into resigning by the way in which he worded his letters of proposal?

APPEALS EXAMINER: That is the point. I don't understand the contention itself, as to how it is pertinent to your particular case, here this morning. Maybe you can explain the contention and we will determine whether or not it is pertinent, you see?

MR. HANDLER: Yes.

I should say this, and I will if I haven't already demonstrated it, the correspondence both prior to and [52] subsequent to the letter of proposed removal or separation states that my new post of duty is Detroit. If I don't report, I am absent without leave.

Now, prior to, and, of course the letter of proposal says I will be separated. It does not say removed. Ultimately, I was removed. Prior to the letter of proposal, it was stated on numerous occasions, and I have the memoranda to substantiate it, merely, if I did not report to Detroit, I would be absent without leave. I was advised it would be misconduct on my part not to report to Detroit, and, in the memorandum, which I just submitted, Commissioner Holcombe says, 'Your written note to me telling me you will not accept the transfer to Detroit is not a resignation and I can pay no attention to it, and until and unless you resign, as far as I am concerned, your compliance office is scheduled for transfer to Detroit, therefore, you have to go to school and you cannot take time off, now, to write your appeal to the Secretary.

I will quote one statement from Commissioner Holcombe's memorandum of November 1, 1962, as Exhibit 2. 'Your statement made in memoranda that you cannot accept this reassignment did not constitute a formal resignation in lieu of reassignment. Therefore, at least until

such time as your petition to the Secretary has been answered, you are a Compliance Officer scheduled for reassignment to the Detroit [53] Office. If your appeal to the Secretary is unsuccessful, you will be directed to report to Detroit, at a specific time". Now, I emphasize this next sentence. "At that time you must either report, as directed, submit a properly executed standard form 52, or you will be removed for failure to accept reassignment". Now that is important for two reasons, that sentence.

Well, actually, I should quote another sentence. "We are in no way attempting to coerce you into submitting a resignation". I think he is doing exactly what he says he is in no way not doing. I want to read, again, the last sentence of the third paragraph of Exhibit 2. "At that time you must either report as directed, submit a properly executed standard form 52 indicating your resignation, or you will be removed for failure to accept reassignment."

Now, there is an example of what I mean when I say what I do and not what I say is important. Commissioner Holcombe is telling me that I must report to Detroit as directed, or resign, or I will be removed. He is telling me that my telling him I will not accept a reassignment means nothing. He will go ahead and reassign me anyway, and when I fail to report, I will be removed. This is pertinent for two reasons, to show that the proposal and the memoranda proceeding it were an attempt [54] to coerce me into resigning, rather than processing my rights as a removed employee.

APPEALS EXAMINER: Are you contending in that connection, Mr. Handler, that an attempt under these circumstances to obtain your resignation, would be a violation of your rights?

MR. HANDLER: I think the way I am contending, the way the letter of proposal was worded, stating that I would be absent without leave unless I reported to Detroit, was an attempt to get me to resign, rather than exercise my rights as a separated employee and rather than have

this hearing, and this will become pertinent later on, to demonstrate that if I reported to Detroit, according to Commissioner Holcombe, I would not be removed for failure to accept a reassignment.

Commissioner Holcombe, in Exhibit No. 2 says, "You must either report as directed or you will be removed". Supposing I reported as directed, but only to retain my pay status during the notice period. Commissioner Holcombe says if I report to Detroit, I will not be removed. Suppose I report merely for a pay status purpose during the notice period.

MR. FINNEGANN: May I raise a question? What was the date of that memorandum from which you are quoting?

APPEALS EXAMINER: The memorandum just submitted into evidence is marked Appellant's Exhibit No. 2, dated [55] November 1, 1961.

MR. FINNEGANN: I think we are governed by the letter of charges, not by previous correspondence.

MR. HANDLER: May I comment on that?

APPEALS EXAMINER: Yes, sir.

MR. HANDLER: The question, Mr. Finnegan, and the problem, is how to interpret the letter of charges and what does it mean. What does the language of the proposed letter mean, and the proposed letter states if I fail to report to Detroit I will be removed or separated. In a previous letter Mr. Holcombe told me if I do report to Detroit, I will not be separated. I am trying to reconcile this with his statement in the letter of charges.

Mr. Finnegan, if Mr. Holcombe's language in the letter of proposal contradicts what he had previously written, and therefore I didn't know what he meant in the letter of proposal, and I questioned him at great length about it because in these previous memoranda he indicated my saying I will not accept the memoranda means nothing, it is what I do. I wrote to him, as a result of his letter of proposal and stated, "You tell me to report to Detroit during the notice period, but you have already told me in previous memoranda that it is what I do

that counts." In other words, if I reported to Detroit, according to Mr. Holcombe, I would have to tell him this is not permanent. [56] What I say, then, would become important, but he has already told me in the letter of November 1, what I say is not important, but what I do. My memoranda indicating to him that I do not wish to accept a reassignment is not important and he can't pay any attention to it. Isn't that what the situation would be if I went to Detroit and told him, I am not reporting for permanent status?

MR. FINNEGANN: I again raise the question of pertinency of quoting a memorandum some 5 or 6 months prior to any proposed letter of adverse action.

APPEALS EXAMINER: In that connection, the Commission will review the procedural documents in the file and make a determination as to whether or not you were properly and adequately notified of the reasons for the removal or separation, whichever it may have been.

* * *

[60] On page 4 of personnel instruction No. 30, Arabic 2, is labeled Contents of Letter. They are speaking there of the letter proposing the adverse action. Therein is stated the elements of such a letter, and item D, under this section, that is on page 15 ld reads that "a promise of decision, and a statement of the employee's status pending receipt of decision, shall be included in the letter". According to this provision, the letter proposing adverse action must advise the employee of his status during the notice period.

It is this on which I rely, a violation of this, I rely when I state in item F of my appeal letter, "the notice of proposed adverse action did not adequately advise me of my status during the notice period. I have already established in various memoranda -- no, I guess I have not, except we have talked about the incompatibility between reporting to Detroit, which was supposed to be my permanent post of duty and being in a duty status only during the notice period, if I so reported.

Well, just from memory, I would like to recite just a few facts. The memoranda in the record, I believe, will show that the Commissioner has stated that if I were to report to Detroit, it would be my permanent post of duty [61] so that I wouldn't be in a per diem status but it would be a temporary post of duty, so I couldn't take my household effects with me.

APPEALS EXAMINER: Mr. Handler, it doesn't appear to me that this is pertinent unless you have some explanation.

MR. HANDLER: The pertinency of it is that it is a violation of the Department of Labor regulations that the proposal letter shall contain a statement of the employee's status during the notice period. Now, the Commissioner's letter told me that my status during the notice period would be that of active duty status, if I reported to Detroit.

APPEALS EXAMINER: The Commission will be in a position to review these letters and documents issued, and make a determination as to whether or not you were in the proper status during the notice period.

MR. HANDLER: Well, my point, Mr. Bates, at this particular juncture is not whether I was in the proper status but whether the Commissioner's letter, proposing the adverse action, told me what my status would be, and if it did not, it is a procedural defect.

APPEALS EXAMINER: I suggest you state your case and present all the relevant information so the Commission will be in a position to take a look at the documents and make a determination as to whether or not this is [62] pertinent to your contention.

MR. HANDLER: Well, then, in that event, I wish you would allow me about 2 minutes to look through some papers to see whether or not all the relative documents are in the Commission's record.

I would like to submit some additional material on that, Mr. Bates, and I wish I could comment on it, briefly and make any arguments relating to it.

APPEALS EXAMINER: We will give you an opportunity to make a

closing argument. We are interested at this point in information concerning the facts of the case. Your presentation should be a presentation of all of the facts of the case at this stage.

MR. HANDLER: Well, I am not satisfied to let these memoranda speak for themselves. I would like to make my oral presentation and supplement it with documents too.

APPEALS EXAMINER: You may furnish explanatory information concerning the documents at this time and we will allow the Agency representative to look at the documents and comment before we admit them into evidence.

MR. HANDLER: Well, I have a memorandum I would like to submit and supplement and explain, if I may?

APPEALS EXAMINER: You may proceed.

MR. HANDLER: Is it your wish that I let the agency representative look at them?

[63] APPEALS EXAMINER: First, I suggest that you identify the document you have, state the purpose for which you are introducing the document, state, briefly, your contention in connection with the document, and then allow the Agency representative an opportunity to look at the document, and we will determine, then, whether or not it shall be admitted into evidence.

MR. HANDLER: In connection with Item F(a) on page 2 of my appeal, which states that I was not appropriately or adequately advised of my status during the notice period, I have a memorandum I wrote to Edward J. McVeigh, Director of Personnel, Department of Labor, dated July 5, 1962, and in that letter I note that Mr. McVeigh is cited by Commissioner Holcombe as the authority for saying I can be in a pay status during the notice period only if I go to Detroit. I am asking him to confirm that he is the authority for that statement and I ask him for his rationale.

APPEALS EXAMINER: I am having great difficulty in understand-

ing the pertinency of any of this. I suggest that you give us an explanation before we proceed.

MR. HANDLER: Well, the personnel instructions No. 30, Department of Labor, states, an employee shall be advised of his status during the notice period.

Now, I was advised that my status was I would be in a pay status only if I went to Detroit, and I am trying to [64] establish that I asked the Department for an explanation or authority or rationale for that statement that it would be only in Detroit that I could hold my pay status during the notice period, and I am trying to introduce documentary evidence that I asked for that information, and to show by documentary evidence what the reply was.

APPEALS EXAMINER: It would appear that the documents which informed you what your status was during the notice period would speak for themselves. However, you may proceed, and we will see whether or not the document is pertinent.

MR. HANDLER: Well, in this memorandum from Mr. McVeigh, I ask him to explain the rationale involved in reaching the decision that I must go to Detroit to be in a pay status during the notice period, and not having received an answer, on July 12 I point out to him I cannot make an informed decision regarding my resumption of a pay status until he advised me how or what they base their decision regarding Detroit being necessary to maintain a pay status during the notice period on. I received no answer. That is the sum and substance of what I am trying to point out at this point. I was not advised what was relied on in saying I can be in a pay status only in Detroit and as I pointed out to Mr. McVeigh, I cannot make an informed decision whether or not I would go to Detroit to be in a pay status until he advised me of his authority.

[65] APPEALS EXAMINER: Would you hand the document to Mr. Finnegan?

Do you care to comment, Mr. Finnegan, regarding the document? You may comment or make any objection you care to make concerning the document.

MR. FINNEGAN: The documents were received, and they were answered to the best of the knowledge of the Director of Personnel.

APPEALS EXAMINER: Let the record show that two documents have been handed the Examiner. One is a letter dated July 5, 1962, and the other is a letter dated July 12, 1962. Both letters are to Mr. Edward J. McVeigh. Both are signed by Mr. Handler. The documents have been marked as Appellant's Exhibits 3 and 4 respectively, and admitted into evidence.

(Appellant's Exhibits 3 and 4 were marked for identification and retained by the Examiner).

APPEALS EXAMINER: You may proceed.

MR. HANDLER: I understood Mr. Finnegan to say my questions were answered, and if they were, I wish he would introduce some evidence to substantiate that statement.

MR. FINNEGANN: I said the memos were answered. Mr. McVeigh wrote you a memorandum saying he had personally satisfied himself that this information was correct.

[66] MR. HANDLER: Did he give me his rationale or authority?

MR. FINNEGANN: I don't think he did, but I don't think that is pertinent to the case.

MR. DECKELMAN: I would like to ask, at this point, whether that letter, or a copy of it is in the record.

MR. FINNEGAN: It is in the record.

APPEALS EXAMINER: Would you further identify the document to which you refer?

MR. FINNEGANN: It is a letter dated July 11, 1962, starting out, "This is in reply to your memorandum of July 5, 1962 . . ."

MR. HANDLER: What is the date of that?

MR. FINNEGANN: July 11th.

APPEALS EXAMINER: I believe there is a copy of that letter in the Commission's file.

MR. HANDLER: Yes. The memorandum does not answer my question as to his rationale or authority. I would like to point this out, also.

This letter was received by me on July 17th --

APPEALS EXAMINER: Mr. Handler, I don't see, at this stage anyhow, whether or not the Agency answered your letter would have any bearing on these particular issues of this case. It appears to me that we are getting off the main issues of the case here.

[67] MR. HANDLER: I am trying to stay on the issues, Mr. Bates. I am discussing, now, the requirement in the personnel instruction No. 30, that "In a letter proposing adverse action, the employee be adequately advised of his status during the notice period", and I wanted to go to Detroit, if that were necessary to maintain a pay status during the notice period.

My point is this. I wanted to be in a pay status during the notice period. It seemed to me if I had gone to Detroit, it would take a resignation for me to leave. I was trying to ascertain from the Department, on what reasoning or authority they said I would have to go to Detroit to be in a pay status during the notice period. I was never advised. The regulation that I be adequately informed of my pay status during the notice period was not complied with and I am trying to bring out, by virtue of these meoranda that I specifically asked for the information and still did not get it.

APPEALS EXAMINER: The documents should speak for themselves and the Commission should be in a position to read those documents and make a determination as to whether or not you were adequately advised of your status.

You should make your contention and refer to the documents of record, and let the Commission make the decision as to whether or not your contention is sustained.

[68] MR. HANDLER: The Department of Labor has not furnished all of the documents --

MR. FINNEGANN: Nowhere in that paragraph to which he refers is the word "adequately" used. It states he should be notified of his status.

MR. HANDLER: That is a rather meaningless requirement if I am not to be adequately informed.

MR. FINNEGANN: What is adequate, in your opinion, may not be adequate in mine or vice versa.

MR. HANDLER: Of course, that is true.

MR. FINNEGANN: It is up to the Commission to determine whether or not it is adequate.

MR. HANDLER: I will drop that particular line of reasoning, or that particular question. I have one more comment.

I agree with everything Mr. Finnegan has just stated. Now, in order to determine what the Bureau's position was, I asked for further information and I did not get it.

On page 2 of my appeal item (c) is another item regarding the procedural defects in my letter of notice. In there, I state that the charges against me were not sufficient in detail and were deliberately misleading.

Now, there, again, I am referring to my -- well, I am referring, there, to the statement already discussed, that the Secretary had affirmed that my post of duty was Detroit. ***

[82] [Mr. Handler:] *** Now, in that memorandum, Mr. Kleiler tells me, in accordance with the Secretary of Labor's decision, he tells me why I am being transferred. This is why. In accordance with the Secretary of Labor's decision, the Department has [83] canvassed all of the jobs available in Washington to see if one is available for me. There is none. The Bureau of Management reports it has canvassed their Washington situation and there are no jobs available to me. This is all in compliance with the Secretary of Labor's decision, and because

of failure to find an opening for me in Washington, they are now transferring me to Detroit. In short, they are telling me there was a Secretary's decision to canvass the area for vacancies. They did this, and there is no vacancy, and they are transferring me to Detroit and it is my failure to accept that transfer that is the basis for this removal.

It is my contention that the Secretary decision, cited as authority, does not, in fact, exist, and therefore, my transfer was an order that need not have been obeyed, and my failure to obey it is not a proper ground for my removal.

APPEALS EXAMINER: Are you contending that the decision was not made by a responsible official of the Agency, who had delegated authority from the Secretary?

MR. HANDLER: Yes, I am. ***

* * *

[87] [Appeals Examiner:] *** The Commission does not sit as a Board of Appeals for Agency grievances.

MR. HANDLER: I just want to make my contention plain as to what my position is on this point.

My grievance was with respect to the transfer, and I was entitled to a Secretarial decision or review of my grievance. Now, I ostensibly received a grievance, this is the one that had ajg superimposed on it.

In the letter of April 23, 1962, in which the Department of Labor is transferring me to Detroit, they cite, as authority for that transfer, this decision with the initials ajg superimposed. That is their cited authority for transferring me. I am saying that was not a proper authority because it was not the Secretary's decision, or if it was, I haven't been informed. Therefore, I am saying my subsequent removal is not proper, because the transfer order itself was not proper, and failure to obey an order that is improper is not a basis for removal.

APPEALS EXAMINER: It appears to me that we are building a record concerning matters that have no bearing on the case.

I am going to insist that we stick to the letter of charges that have to do with the proposed removal action, [88] and any evidence you may have concerning whether or not the removal action is warranted.

MR. HANDLER: I am not arguing. I just want to make sure you understand my point. The removal is for failure to accept the transfer. I am attempting to show that the transfer was not authorized. I, in fact, refused to accept the transfer. That is the basis for my removal but I am contending that my refusal was justified because the transfer was not authorized.

APPEALS EXAMINER: Are you questioning the administrative authority of the Agency to reassign you to another duty station?

MR. HANDLER: No, I am not. The Department's personnel rules require that because I filed a grievance regarding my transfer, the Secretary had to make a decision regarding my transfer. I am saying he did not, which is a violation of the Department's rules, and because of that, because of the Department's own rules, which the Courts have held are binding upon them, my transfer was unlawful.

* * *

[94] [Mr. Handler:] My first documentary evidence is a memo dated April 2, 1962, from Mr. McVeigh to Handler, and it forwards to me the Secretary -- the alleged Secretarial decision in my grievance with the okay, ajg written on it. That is my first piece of evidence.

[95] APPEALS EXAMINER: Do you care to comment concerning this document, Mr. Finnegan?

MR. FINNEGANN: No.

APPEALS EXAMINER: Let the record show the letter just handed the Examiner, dated April 2, 1962, to Mr. Handler from Mr. McVeigh, has been marked Appellant's Exhibit No. 10, and admitted into evidence.

(Appellant's Exhibit No. 10 was marked for identification and retained by the Examiner.)

MR. HANDLER: I have, here, a photostat of a memorandum from the Secretary of Labor to all employees, dated May 1, 1962, and that, also, is initialed ajg, and I offer this in evidence to show the ajg on my secretarial decision is not in the Secretary's handwriting.

MR. FINNEGANN: I might point out that we have no guarantee that either of these is the Secretary's handwriting.

APPEALS EXAMINER: The document is marked Appellant's Exhibit No. 11, and admitted into evidence.

(Appellant's Exhibit No. 11 was marked for identification and retained by the Examiner.)

MR. HANDLER: In connection with that, Mr. Bates, possibly, I should give you this also. It is a [96] photostat dated February 20, 1962. It has no significance other than the signature. It is signed Arthur J. Goldberg. This signature is one I have seen many, many, many times and it is, as far as I can tell, the Secretary's signature, and the ajg in this signature, I would say, were not written by the man who wrote the ajg in my Secretarial decision.

* * *

[113] [Mr. Handler:] Now, I think that most of my -- and I probably would be content to rest on it -- most of my grievance defects that I am complaining of now were stated in an appeal I wrote to the Secretary.

APPEALS EXAMINER: I suggest that you submit a copy of that letter, if you feel there is any merit to it, so that we can make whatever -- if we find there is any merit to your contention, we will give it whatever consideration we feel it may have.

MR. HANDLER: The appeal actually consisted of a brief consisting of 52 pages of text and exhibits (a) through (n).

APPEALS EXAMINER: Do you have a copy of these documents or exhibits?

MR. HANDLER: I have a carbon copy, which I have not photostated. I would hesitate to submit the only copy I have. The Department of

Labor should have the Department's official record of this. This is the brief I submitted to the Secretary of Labor, and I assume that the Department has the original.

APPEALS EXAMINER: Does the Agency care to comment concerning this?

MR. FINNEGANN: We have the original.

APPEALS EXAMINER: Do you care to submit it in evidence?

MR. FINNEGANN: I don't see how we can.

[114] APPEALS EXAMINER: Your answer is no?

MR. FINNEGANN: No. I would prefer not to, and I would like to state if you are permitted to submit material in writing after the hearing is closed, that we be given an opportunity to present written material in answer to any questions the Civil Service Commission may have, upon reviewing your petition.

APPEALS EXAMINER: In that connection, if the Appellant does present evidence, subsequent to the hearing, we will give the Agency an opportunity to make any other comment concerning that information.

MR. FINNEGANN: That is all I am asking.

* * *

[115] MR. HANDLER: Well, then, for the record, I would like to state that I feel I did not get the prescribed grievance procedure, preliminary to my transfer to Detroit, and that I was subsequently removed for failure to accept that transfer, that there were many defects in the grievance proceedings, one of which was my failure to get the Secretarial review. Before my failure to get the Secretarial review, there were many, many other defects, which I have outlined in an appeal that I submitted to the Secretary of Labor. I have only one copy of that appeal, and I propose to photostat it and submit it to the Commission after the close of this hearing.

[116] APPEALS EXAMINER: Does the Agency representative have any objection?

MR. FINNEGANN: No, sir.

* * *

[150] APPEALS EXAMINER: This would all be in the record, then, wouldn't it?

MR. FINNEGANN: No. This all took place a year ago. However, I do believe it is covered in the petition for review by the Secretary.

* * *

[151] [Mr. Handler:] *** If Mr. Finnegan has my grievance record, which he indicates he has, he may want to save us some time by giving us the document that is in that file.

MR. FINNEGANN: I can't take that file apart.

APPEALS EXAMINER: Do you care to submit a copy of the entire proceedings?

MR. FINNEGANN: I object. It would take us a long time to reproduce 500 pages when it is of highly doubtful relevancy.

* * *

[168] [Mr. Handler:] *** The Secretary's decision of my grievance -- we are not speaking now of the decision to dismiss me -- but the Secretary's decision of my grievance was:

(1) Try to find an opening for Handler. This directive was to the Department and to the Bureau.

(2) If no such opening can be found transfer Handler wherever he is needed.

* * *

APPEALS EXAMINER: Before you go further, can you tell me whether or not the record contains a copy [169] of the Secretary's decision of the grievance.

MR. FINNEGANN: That is already in the file.

APPEALS EXAMINER: I was wondering if there is a letter in addition to the one in the file that has the initials, "A.J.G."

THE WITNESS: [Mr. Handler] It is not in the file as originally

submitted by the Department, I am quite sure. I believe I submitted it yesterday, if you will permit me to check my list of exhibits.

MR. FINNEGAN: I think he did.

THE WITNESS: It is Exhibit No. 10, I believe, Mr. Bates. Will you check that please for verification?

It is a letter dated 4/2/'62, which has attached to it the Secretary's decision.

APPEALS EXAMINER: The one that has the initials across the front of it?

THE WITNESS: Yes, sir.

APPEALS EXAMINER: This is a three page document and the letter is from David S. North.

THE WITNESS: That is right.

APPEALS EXAMINER: And that is the Secretary's decision in your grievance appeal.

THE WITNESS: I don't know if Mr. Finnegan wants to answer that or not. It is the only decision I have, Mr. Bates. It is constantly referred to in memoranda to me as [170] the Secretary's decision of 3/30/62.

You will note that the "okay" off "A.J.G." is also accompanied by the penciled or ink notation, 3/30/62, and that I am sure, at least as far as I have been informed, is the Secretary's decision of my grievance.

As a matter of fact, the cover letter transmitting that states, "Attached is your Secretary's decision." I believe, if you will look at the Exhibit No. 10, which is the letter to Holcombe from McVeigh, dated 4/2/62. Is that not correct? Oh, no. To Handler from McVeigh.

APPEALS EXAMINER: Yes, sir.

THE WITNESS: And does it not say, "I am forwarding the Secretary's decision of your grievance?"

* * *

[197] [Mr. Handler:] *** Now, I am sure you realize how hard it is to prove a charge of arbitrary and capricious action, ***

[Mr. Handler:] *** We are dealing with top management officials who are not, in every instance, crude. These things are subtle and do take some explanation and they are worded to appear perfectly proper, and do appear perfectly proper in most instances, and will appear perfectly proper if they are not explained by someone who lived through this thing.

* * *

[212] THE WITNESS: I will tell you.

You can make a new ruling if you wish but I just want to be sure that you knew what you were excluding.

Now, I had stated that -- and it has been well established by this time -- that I was transferred effective May 7, 1962, because the Bureau and the Department canvassed the Washington Area for jobs in accordance with the Secretary's grievance decision, and that they found no openings. Now, I wanted to introduce evidence that the type of work that I am qualified to do and that is done in the job that I want to fill, such a job was being filled, or such work was being performed by a man who, according to Civil Service rulings, did not legally qualify.

He was according to personnel records, an auditor, but he was doing investigative work.

APPEALS EXAMINER: Let's get down to specific names, dates, and positions.

THE WITNESS: His name is Anthony Albamonte.

APPEALS EXAMINER: What is his position?

THE WITNESS: I am a G.S.-12 investigator. Mr. Anthony Albamonte -- A-L-B-A-M-O-N-T-E -- was performing G.S.-12 investigator duties.

APPEALS EXAMINER: You are saying he was not [213] qualifying for the job he was occupying, is that what you said?

THE WITNESS: No, now, this is what I am saying. This is what I want to be sure you understand before you exclude it. I am saying the

Department has admitted -- well, let me put it this way. That the Department has admitted that Mr. Albamonte was apparently on an illegal detail in the performance of those duties.

APPEALS EXAMINER: Has the Agency admitted this particular point?

THE WITNESS: Yes, sir.

APPEALS EXAMINER: That he was on illegal detail?

MR. FINNEGAN: Yes, sir.

APPEALS EXAMINER: Proceed.

THE WITNESS: Your ruling, to exclude testimony regarding this man was based on the fact that illegally or not, the job was filled. Now, my additional point at this time is to tell you that the Agency knew the job was illegally filled.

Now, if your ruling is still that I cannot go into it, of course, I cannot go into it.

APPEALS EXAMINER: What is the evidence you want to submit?

THE WITNESS: Well of course, I guess the best evidence in the world is Mr. Finnegan's assent just now. What [214] I was going to submit, and I will, because I don't think Mr. Finnegan's assent is in enough detail, is read from the Burdette transcript, as I have just done, any my point -- what I am trying to demonstrate is that at the time when I was transferred, 5/7/62, at a time when the Secretary advised the Department and the Bureau to check the area for vacancies that I would fill or could fill, that at that time, this man was on this illegal detail, performing functions of my job.

APPEALS EXAMINER: Are you claiming a right to this position occupied by the individual in question?

THE WITNESS: I am claiming this. That I don't think the Bureau and the Department acted in good faith on the Secretary's instructions that they canvass the area for an opening for which I was qualified because I think if they acted in good faith, at the very least, they would

have recognized that I should be allowed to fill this illegally filled position, because of course, I legally could fill it.

APPEALS EXAMINER: Does the Agency representative care to comment concerning this matter? It may be that we can dispose of the issue right here and now.

MR. FINNEGAN: Well, Mr. Handler is confusing the issue, I believe, in this respect. The Commissioner has the privilege of assigning employees as he sees fit.

[215] THE WITNESS: Mr. Bates, I think this is an argument, which you have excluded.

APPEALS EXAMINER: Let Mr. Finnegan make his statement. You raised the issue.

THE WITNESS: I know, but you never permitted me to argue my case to any extent.

APPEALS EXAMINER: We are not arguing the case. He is making an explanation here.

THE WITNESS: All right.

APPEALS EXAMINER: I have been very lenient with you in letting you discuss your case all the way through, that is, in connection with every piece of document you have submitted.

You may proceed, Mr. Finnegan.

MR. FINNEGAN: There was no obligation to any specific position, in any specific place. The Commissioner, in good faith -- the Secretary's office -- namely, the Office of Personnel Administration -- in good faith, canvassed every Bureau, every organization entity of the Department of Labor. There was no one willing to offer Mr. Handler a re-assignment. The gentlemen, Mr. Albamonte, about whom Mr. Handler complains, subsequently was found to be eligible for the position of Compliance Officer, and subsequently was transferred as a Grade 12 Compliance Officer to Detroit, Michigan.

[216] THE WITNESS: Mr. Finnegan's statement is very misleading. This is the sort of thing I mean when I say these things are subtle and have to be explained.

Now, I state for the record, and I am under oath, that Mr. Finnegan's statement is misleading and does not state the conditions.

APPEALS EXAMINER: Make your explanation.

THE WITNESS: Well, Mr. Finnegan has stated that the man subsequently was found qualified. Now, that is a totally misleading statement. It may be true, while I question it, but if true, it is misleading, because it does not mean what it appears to mean.

Now, Mr. Finnegan, at the time that I was transferred on 5/7/62, was Mr. Albamonte in an illegal detail?

MR. FINNEGAN: To my recollection, he was on a detail to which he had not had Civil Service approval.

THE WITNESS: In view of Mr. Finnegan's answer, I think I will have to refer to the transcript, where I asked the same question during the hearing, and Mr. Finnegan said, yes, the man is apparently on an illegal detail.

Did you make that statement, Mr. Finnegan?

MR. FINNEGAN: Approximately, to my recollection.

THE WITNESS: You are making a different statement now.

[217] MR. FINNEGAN: No. If you will listen, the same conclusion is obvious.

APPEALS EXAMINER: It may be that the wrong emphasis here has been placed on the word "illegal". Do you mean illegal or improper?

THE WITNESS: Illegal, sir. Illegal.

APPEALS EXAMINER: Or improper, or unauthorized.

THE WITNESS: And I still contend that Mr. Finnegan is deliberately confusing and misleading the Hearing Examiner. For this reason. Mr. Finnegan very frankly admitted, after I made it impossible to do otherwise, at the hearing, Burdette's hearing, that Albamonte was illegally filling a detail and illegally employed in investigative duties, and had ever since his employment in the Department of Labor been illegally so employed. His very employment was illegal.

APPEALS EXAMINER: Mr. Handler --

THE WITNESS: May I finish my statement? May I finish my statement?

Now, it developed during the hearing that it was Mr. Finnegan's opinion that the experience necessary to legally qualify for such a job could be met during this illegal period of employment by Mr. Albamonte.

For example, this job required, let us say, one year of experience. Now, Mr. Albamonte, as a result of this [218] illegal employment, got the year of experience.

Now, at the time I was transferred, it had not yet been determined whether this illegal experience would qualify and make the position now legal. So that when Mr. Finnegan says the man was later found qualified, he does not mean that he was qualified all the time. He means the man was illegally employed; then as a result of the illegal employment, he was found to have the necessary experience. Now, that is why Mr. Finnegan's statement was grossly misleading.

APPEALS EXAMINER: Do you care to make a comment, Mr. Finnegan?

MR. FINNEGAN: Yes, sir. I would like to comment.

The employment of Mr. Albamonte was completely legal. The detail to the position of Compliance Officer was done by the Bureau of Labor Management Reports beyond six months, without prior approval of the Civil Service Commission.

That was the extent of the irregularity.

APPEALS EXAMINER: Proceed.

THE WITNESS: I will have to read from some material. I have to refute that statement, Mr. Bates.

I might tell you that I have the Committee -- the Grievance Committee's decision in the Burdette case which reads as follows:

[219] "Mr. Albamonte has been on an illegal detail, apparently, ever since his employment with the Bureau of Management Reports."

That is what the Committee found.

APPEALS EXAMINER: Regardless of what terminology was used, whether word "illegal" or some other word was used, the Commission will be in a position to determine the merit of any such allegations.

* * *

[226] THE WITNESS: I am quoting from page 223 of the [227] of the transcript of Burdette's grievance hearing.

This testimony was given in Washington, D.C., January 12, 1962.
On page 223, Handler speaking:

"Would you please answer my question, Mr. Finnegan. Was it wrong for his original hiring to be in fact, to fill an Investigator's position, but on the record, to fill an Auditor's position?"

His original hiring refers to Anthony Albamonte.

Mr. Finnegan speaking:

"Of course, it was incorrect."

Handler speaking:

"Now, that was the very first action taken?"

On page 224 we continue.

"MR. FINNEGAN: Yes."

Mr. Handler speaking.

"By B.L.M.R.? By the Department of Labor, with respect to Mr. Albamonte's hiring?"

I will repeat that.

"MR. HANDLER: 'By B.L.M.R.? By the Department of Labor with respect to Mr. Albamonte's hiring?'"

Mr. Finnegan speaking:

"Right."

Mr. Handler speaking:

"Is it true, his very hiring, from its very inception was wrong?"

[228] Mr. Finnegan speaking:

"Check."

"In fact, we might say illegal."

This is Handler continuing.

"All right, let me put it this way. It was in violation of the Civil Service rules, and I am prepared to say these rules have the weight of law, so from its very inception, Mr. Albamonte's hiring was illegal or at the very best, a violation of the Civil Service Rules?"

That is a question. It is followed by a question mark.

"MR. FINNEGAN: Irregular is the term I would use."

That was Mr. Finnegan speaking.

"Irregular is the term I would use."

Handler speaking:

"Was it a violation of the Civil Service rules?"

Mr. Finnegan speaking:

"Yes."

Mr. Handler speaking:

"Now, you attempt to justify what has happened since then. I don't
****"

Mr. Finnegan speaking:

"I am not attempting to justify it. I am simply [229] explaining what they could have done to legalize it."

You note Mr. Finnegan states:

"I am explaining what they could have done to legalize it." That certainly implied that it was not then in a legal state.

I am not going to read you the rest of it but from that point on, Mr. Finnegan explains how they might have, I would say, circumvented the law and strictly, possibly, be in compliance with it, which the morality of which, I would say is doubtful, but in any event, I think I have demonstrated that he has not met the illegality of what was done.

I might add that -- well, let's scratch that out.

I thank you, Mr. Bates, for permitting me to take the time to refute Mr. Finnegan's statement.

Now, I think I have demonstrated that Mr. Albamonte's hiring was illegal, from the very inception. Possibly a little more detailed reading

from this transcript would be necessary to demonstrate, not only was his original hiring illegal, but he was illegally performing the functions of a job which I could have filled legally at the time I was transferred because there was no vacancy in Washington. Now, if that last point has not been sufficiently established, perhaps I better read just a little bit more from this transcript. In other words, I feel I established the illegality of the original hiring. I am now speaking [230] of the illegality of his employment at the time when I was transferred for lack of a vacancy

APPEALS EXAMINER: I believe the issue is squarely before us; it appears to me it is.

* * *

[232] THE WITNESS: I am going to submit two exhibits regarding what I consider procedural defects of my removal, and they are exhibits on which I am just going to comment very briefly, in which I request of the Personnel Office that they advise me of the status of three individuals whom I felt were filling jobs that possibly I had a greater right to, and I was then under a proposal of removal because there was no job in Washington and that I would not accept a transfer to Detroit.

That is one document.

In the next document, the Office of Personnel Administration advises me that they will not give me that information because I already had my grievance hearing, but [233] I was then under a proposal of removal, and I submit these two documents, Mr. Bates.

APPEALS EXAMINER: Do you care to comment concerning the documents, Mr. Finnegan?

MR. FINNEGAN: The memorandum of May 24 was received. The reply appears to be a true copy of the reply that was issued.

The Director of Personnel, or the Acting Director of Personnel, made the reply that he did, on the basis of the fact that the grievance had been disposed of by the Office of the Secretary and therefore, he was not entitled to information to other employees.

I don't have -- I have no objection here, to giving this data of these employees to the best of my recollection. I don't want to be held with being charged with bad faith, and so forth, if I am in error.

THE WITNESS: Mr. Finnegan, the information which your proffer now is pointless. It doesn't do me any good now. The reason given for not having given me that information before was that my grievance was concluded.

I, however, asked that information in connection with my removal. I was then in possession of a proposal that I be removed, and it was in that connection that I wanted to know the status of those three people.

MR. FINNEGAN: I am not in a position to overrule my [234] my superiors.

THE WITNESS: Oh, I am not criticizing you, Mr. Finnegan, I am introducing these documents in evidence. You will note that I did not say they were written by you or received by you. I merely introduced this as evidence.

MR. FINNEGAN: Those are my comments.

APPEALS EXAMINER: Let the record show that the documents just handed the Examiner are, first --

MR. FINNEGAN: The one in the left hand is the prior one.

APPEALS EXAMINER: The first memorandum, dated May 24, 1962 to Mr. Harold E. Finnegan from Mr. Handler. It has been marked Appellant's Exhibit No. 46.

(Appellant's Exhibit No. 46 was marked for identification.)

APPEALS EXAMINER: The second document is a memorandum dated June 8, 1961 to Mr. Handler, from Mr. Charles H. Roberts. It has been marked Appellant's Exhibit No. 47.

(Appellant's Exhibit No. 47 was marked for identification.)

APPEALS EXAMINER: The documents are admitted in evidence.

(Appellant's Exhibits 46 and 47 for identification were received in evidence.)

* * *

[237] APPEALS EXAMINER: The documents will be admitted in evidence.

(Appellant's Exhibits 48, 49, and 50 for identification were received in evidence.)

* * *

[245] APPEALS EXAMINER: It appears we now are ready for the Agency's presentation of its side of the case. Does the Agency have any evidence or information to submit?

MR. FINNEGAN: The Agency has no evidence to submit.

APPEALS EXAMINER: In other words, the Agency is going to stand on the record, is that it?

MR. FINNEGAN: Yes, sir.

APPEALS EXAMINER: Well, it looks like --

MR. FINNEGAN: Can I raise one question? This does not preclude me from spending 10 minutes in summarizing the high points subsequently?

APPEALS EXAMINER: As a closing statement of summation. That is right. That is right.

* * *

[252] [Mr. Handler:] *** Now, to contend that my answer would be the same regardless of whether the Secretary of Labor had approved my transfer or not, is absurd. The Secretary of Labor is the ultimate authority in the Department, and of course, my answer to these charges of failing to accept the transfer to Detroit, would depend greatly on whether or not I had been advised that the Secretary of Labor had approved that transfer.

It is true that the Secretary of Labor need not approve it, but if I am advised that he has, obviously, it is going to affect the way I answer the charge against him.

Now, on that very basic aspect of my letter of proposed removal, there were serious changes, the last one being July 18, 1962, at which time, I simply did [not] know what the Commissioner meant.

[253] Now, the letter of July 18, 1962, left me with a feeling that the Commissioner had retracted the statement that the Secretary had approved my transfer, but at that time, I only had about three days to answer the charges instead of the ten that I am supposed to have gotten, and I can sincerely say that up until that time, I was actually waiting before making my answer to find out what was meant in the letter of charges when it said the Secretary had approved my transfer.

* * *

[255] [Mr. Handler:] *** Now, if that is supposed to be the Secretary's signature, I would have to call it a forgery. If it is supposed to be that of a delegated, authorized person, I certainly have a right to know who that person is. Initials written by someone unknown to me mean nothing and I have cited a case during this hearing, Federal case, which indicated that an official can adopt a subordinate's opinion and make it his own, and he adopts it by signing it. So that we cannot say that the Secretary adopted this decision. Therefore, I think that my transfer was without authority, because the Department's own regulations require that I get a Secretarial review of my grievance before the matter is disposed of.

* * *

[256] [Mr. Handler:] I have stated that reprisals began from the day that I filed my grievance, back in June 1961, and they continued right through to the day I was told I was transferred to Detroit effective May 7, 1962.

I related how I was told to be in Detroit tomorrow morning at 8:15 the day I informed the office I was filing a grievance. I related that my assignment, my work detail during the period beginning almost immediately after I filed my grievance to the time I was told to report to Detroit almost a year later, I was on a fraudulent detail. And most of the time, not given any work. At that very time, there was work of the category that I am supposed to do and there was actually one man who was illegally doing that kind of work and I might say that the Department knew of the illegal status of this man.

Now, I don't want to detail all of the arbitrary and capricious acts that I have demonstrated.

[257] I have demonstrated many, among them being the ridiculous, long memorandum suggesting something illegal about the fact that in claiming ten hours of time, I had six hours one day and four another reversed. At that time, that occurred over a half year ago -- I kept no records. I was not required to and moreover, the man who wrote those memoranda knew that I was actually entitled to those ten hours, because he had two spies watching me to see whether I attended class during those ten hours.

We have seen the memoranda saying my rating, my performance rating, would have to be considered satisfactory, and the statement that that was changed but that it had never been intended to be placed in my official personnel folder. The Commissioner said that -- we have seen that, actually, it was in my personnel folder.

With respect to the phony detail that I was on for almost a year, I demonstrated that B.L.M.R. Management knew of the phony detail. I guess you would say they perpetrated it.

I demonstrated that the Office of Personnel administration knew about it. Not only did the Office of Personnel Administration fail to take corrective action; they actually asked the Civil Service Commission to extend it beyond the six months' limitation, then refused to let me see the communication they had sent to the Commission requesting [258] that extension.

Now, ultimately, when I was transferred on 5/7/62 it was because ostensibly, the Bureau and the Department had, in compliance with the Secretary's decision of my grievance, made an honest survey of the job situations in Washington to see whether or not they could place me. Now, after all reprisals that I just lightly touched on, does anybody believe that they made an honest appraisal of the situation to see if they had any jobs in Washington?

Particularly, I ask this question, since at the time I was transferred, and at the time my removal was proposed or my separation was proposed, we had, as I said, at least one man illegally doing the type of work that I am supposed to be doing. ***

* * *

[262] [Mr. Handler:] Now, I want to talk now about the procedural defect that I find in the fact that I was removed, rather than separated. It is an important one, but actually, it can be briefly stated.

I am not going to repeat the citations I made to Chapter R-1, I believe it was, of the manual. It clearly indicates that removal is a derogatory action; one associated with misconduct. I have already referred to Chapter X-4 which states that one of the categories an employee is entitled to benefits under the Separated Career Employee Program is a person separated for failure to accept new assignment to another commuting area. And I already told you that I went up to the separated career employee office, and was told that I would be wasting my time filing for such benefit, if I had been in fact, removed.

* * *

[264] [Mr. Handler:] Now, I think probably, I feel so strongly about that point, that I feel this case could have been decided in five minutes if I had merely come in and stated that I was removed rather than separated and rested my case on that. We could have gone home a lot sooner, Mr. Bates.

* * *

[273] CLOSING STATEMENT ON BEHALF OF
THE AGENCY BY HAROLD E. FINNEGAN

MR. FINNEGAN: I would like to open my remarks by giving a chronology of what occurred prior to the filing of the grievance.

In a notification of personnel action, dated March 30, 1961, known as Standard Form 50, Mr. Handler was reassigned to Detroit, to be effective April 30, 1961. Actually, he was carried on the rolls of that

office until [274] early June, with a deferred date of actually reporting to Detroit, both at the pleasure of the Bureau and the pleasure and request of Mr. Handler.

The deferment was mutually agreeable. There was no problem on that, when the grievance was filed. The reporting date was stated indefinite, until the grievance could be settled as prescribed by the Department's procedures.

When the grievance was settled, the original Standard Form 50 of March 30, 1961, was amended to give a new reporting date of May 7, 1962. Now, under these circumstances, it is pretty hard to see where the allegation with respect to a movement to Detroit is a reprisal, would appear to have much foundation.

With respect to the grievance itself, the procedures and the merits were carefully considered by the Ad Hoc Committee, one member of which was selected by Mr. Handler. The Committee unanimously recommended against Mr. Handler. His petition, some 54 pages, I believe, as well as the transcript of more than 400 pages, was carefully reviewed by Mr. North. This I ascertained with personal conversations with Mr. North yesterday.

The decision on the action of the petition was made by proper authority. There is no question about that. The Agency, the Department delegations permit it. Mr. McVeigh himself could have acted on this particular petition [275] by proper appropriate delegation. He did not. To the best that I can determine, the action was taken either by the Secretary himself or his Special Assistant, Mr. Shulman. I don't know -- S-H-U-L-M-A-N -- It may be S-C-H - I am not sure. In any event, there is no question but what the action was taken by one or the other of those gentlemen, either of whom is competent to act.

The decision was carried out faithfully and in good spirit.

Now, with respect to the merits of the grievance, Management -- and by Management, I mean Commissioner Holcombe and Secretary Goldberg -- obviously, they are the only ones who were in a position

to make a determination as to which assignments, involving more than 20 employees, which duty station is in the best interest of the Bureau.

This determination is not subject to review by the Civil Service Commission.

With respect to the adverse action we believe it to be sound, both on procedure, and on merit, and in the best interest of the Government. However, to eliminate confusion on the point of procedure, the Agency is prepared to correct the Standard Form 50 of August 1, 1962 to read: "Separation" rather than "Removal."

That is all I have to say.

APPEALS EXAMINER: Do you have any further remarks [276] in rebuttal, Mr. Handler?

MR. HANDLER: Yes, I do.

With respect to the last remark, the manual is very specific that the entire procedure must start anew, if a more severe action than the one proposed has been taken, and it makes it very clear on S-1-33, that the beginning of the procedure is the issuance of a new notice of proposed action.

I think I have already read where the manual has stated that the strictest compliance with regulations is required by the Department, of both its own and the Commission's regulations.

Now, Mr. Finnegan states that my original transfer to Detroit was scheduled for 4/30/61 and that the S.F. 50 affecting that transfer was merely changed to show a different effective date after my grievance. That, to me, demonstrates -- scratch out the last sentence.

To me, that demonstrates bad faith, rather than good faith on the part of the Department, for this reason. If you will read very carefully, Mr. North's memorandum to the Secretary, which has the initials, "Okay. A.J.G." on it, you will find that it is therein suggested or recommended, rather, by the Secretary -- allegedly by the Secretary -- that a survey be made of the Washington positions by both the Depart-

ment and the Bureau, and that [277] if that results in no placement of Handler in Washington, he shall then be transferred where he is needed.

Now, as I read that, the Secretary rescinded and cancelled my transfer to Detroit effective 4/30/61. He did not say, "Transfer Handler to Detroit." He said, "Don't transfer him. Place him in Washington, and then, if you cannot do that, transfer him wherever he is needed." We have a brand new transfer. He did not even say, "Transfer him to Detroit if you cannot find anything in Washington." He said, "Transfer him wherever he is needed."

That is a brand, new transfer, and I think the very renewal of the old transfer effective before the grievance, suggests that there was no true attempt to rescind that transfer, survey the situation in Washington, and then decide what to do. They never cancelled the old transfer as the Secretary had suggested.

Now, with respect to whether Mr. North carefully reviewed my grievance, there is in the record, because I introduced them, letters that I wrote to Mr. North, asking him whether he had in fact read my appeal and I asked him if he had, why he did not answer any of the points raised, and in fact, why he did not even acknowledge any of the points raised.

The memorandum he wrote to Mr. Goldberg, which ostensibly became Mr. Goldberg's decision, does not even [278] acknowledge that I wrote an appeal. It does not acknowledge any of the questions I raised. That raises a very serious doubt in my mind as to whether there are any good answers to the questions I raised.

Nor, Mr. North's answer to me, in answer to the questions I have just stated, was, "I have turned your letter over to the Office of Personnel Administrator", rather than Office of Personnel Administration, "Mr. McVeigh, for appropriate answer."

Now, in my letter to Mr. North, I asked him questions that only he could answer. I said, "Did you read my appeal?" "If you did, why did

you not answer the questions raised?" I said, "If you did not read it, did you know it existed?"

Now, in the decision written by Mr. North, he states that my grievance was a long and complicated affair. I asked Mr. North, did he not know that my grievance appeal clarified and simplified this long and complicated issue, pinpointed the questions I wanted answered? Obviously, I asked Mr. North questions only he could answer.

Now, he stated, "I referred your letter to Mr. McVeigh for appropriate answer." In other words, he refused to answer me because Mr. McVeigh was not in a position to answer those questions.

Now, let's look at what Mr. McVeigh's answer is [279] again, because Mr. North did refer the memorandum to Mr. McVeigh for answer.

Mr. McVeigh said, "Mr. North is answerable only to the Secretary." In short, Mr. North refused to answer; Mr. McVeigh refused to answer.

Are these acts of men of good faith, who have done the right thing? I doubt it.

Now, all I have to assure me that there was Secretarial review is Mr. Finnegan's statement here that there was. Now, I don't want to attack Mr. Finnegan's integrity, but frankly, it is easy to do, if I can put my hands on the material. We have already found today where he stated that he never said, Mr. Albamonte was in an illegal status. Maybe I am doing Mr. Finnegan an injustice. Maybe Mr. North did tell him he had read it but I wonder why Mr. North would not tell me and if Mr. North did read it, what are the answers to my questions? Why did he not answer any of my questions raised in the appeal? Why did he not even acknowledge the questions? And I raised this very serious question: Is an appeal of any value? There is no doubt that I was entitled to an appeal on the Secretarial decision. Doesn't that imply that I am entitled to have the questions raised in my appeal answered?

We know, if we have any legal background, that in law, in law cases, that is all that is answered. The [280] Court of Appeals must answer all the questions asked on appeal. That is all. In this case, my questions were not acknowledged. If Mr. North is telling the truth, I had a Secretarial review. The questions raised in my appeal have never been answered.

As far as the Department and the Bureau acting in good faith on the Secretary's instruction that a job be found for me in Washington if one exists, I point out to you that I have shown in many instances that we cannot rely on the word of Mr. Holcombe or Mr. McVeigh.

Mr. Holcombe told me that the memorandum saying that my efficiency rating would have to be considered satisfactory, was not intended for my personnel folder; Mr. Holcombe told me in my letter of proposed separation that the Secretary had approved my transfer before April 23, 1962. He has not yet told me what that means. Was he trying to intimidate me by stating something that was not the exact truth?

I am sure there are many other instances that I can point out, showing inconsistencies between what Mr. Holcombe did and what he said but I cannot put my finger on it right at this moment.

Now, with respect to Mr. McVeigh's statement and the implication that we should accept it at face value, we remember that Mr. McVeigh knew about my fraudulent [281] detail; that I was not doing any work; that the job description was fraudulent. He did not correct it. He extended the detail.

Mr. McVeigh would not tell me who wrote "A.J.G." Now, do you think that Mr. McVeigh conscientiously surveyed the field in Washington to see if there was a job for Handler? This is what I meant when I said that the Commission's practice is not going behind the most recent actions taken prior to removal. This is what I meant when I said, that is only effective if you have men of good will and good faith and integrity administering your agencies. It results in gross injustice where you don't have such men.

* * *

[285] APPEALS EXAMINER: I have one question here, Mr. Finnegan. Would it be possible for the Agency to submit a statement stating whether or not the decision issued in the Appellant's grievance appeal was made by the Secretary or approved in his office?

MR. FINNEGAN: I will try to track that down, sir. I spent a good part of yesterday trying to track it down. I have never been down to the two persons. I shall try.

[286] APPEALS EXAMINER: Could you submit a statement within seven days of this date stating by whom the decision was made in the Appellant's grievance appeal? That is, the final decision?

MR. FINNEGAN: Yes.

APPEALS EXAMINER: Does either side have any other evidence or testimony?

THE WITNESS: I would like to make one comment, just briefly, on what you just said, Mr. Bates.

Before my ultimate removal for failure to appear in Detroit, I think I made persistent efforts to find out who wrote my decision. One of the reasons for my not appearing was that I could not and was not told who wrote my decision. A statement by the Agency now as to who wrote my decision would do me little good. I should have had it in time for me to make a decision as to whether or not I was going to report to Detroit. That is one of the very reasons I did not accept the transfer.

Now, to tell me now, after the thing is an accomplished fact, and my removal is an accomplished fact, that the Secretary did in fact, make that decision, seems to me to be rather late.

APPEALS EXAMINER: It appears to me from the record that the decision letter was signed by John L. [287] Holcombe, Commissioner.

THE WITNESS: That is the decision for removal.

APPEALS EXAMINER: Yes.

THE WITNESS: Yes. What I am saying is this: That the removal decision is based on my failure to accept transfer to Detroit, as a post

of duty. I am saying my failure to accept Detroit, one of the reasons for that is that I did not get a proper Secretarial review and that I could not find out who did write the Secretary's review or who did write, "A.J.G."

In other words, one of the reasons I refused to accept Detroit as my post of duty is that I could not ascertain and was not advised who signed the Secretary's decision.

APPEALS EXAMINER: In that connection, could the Agency representative include in his statement, a statement as to whether or not the "A.J.G." was signed only at the direction of the Secretary of Labor or Mr. Goldberg; whether it was written by him or whether it was signed at his direction?

THE WITNESS: Mr. Bates, I think you missed my point. Suppose we find now that it was. Because I was not advised of that before the reporting date that was given to me for Detroit, I had no choice but to either report to Detroit without a Secretarial decision or be [288] removed.

* * *

[Proceedings in the District Court on December 15, 1965,
In re: Defendants' (Appellees') Motion For Summary Judgment]

* * *

[14] THE COURT: Well, keep in mind, Mr. Handler, that I [15] am not going to substitute myself for all these administrative officers. You know that.

MR. HANDLER: I certainly do.

THE COURT: So let's not get into the substance of the case; let's keep it to the due process.

MR. HANDLER: I think, Your Honor, if you will read my opposition to the defendant's motion --

THE COURT: I have read all the papers, including all the exhibits which you filed and all the exhibits which the Government filed.

MR. HANDLER: I am glad to hear that, Your Honor. I think from that, you will understand -- I know very well that the Court will not substitute its judgment for the administrative officials'.

* * *

[16] MR. HANDLER: My complaint -- I don't think I explicitly stated it and I want to state it now -- that the Civil Service Commission's decisions are not supported by the evidence.

* * *

[18] It also distresses me as a taxpayer and a citizen to have public officials on Government salary using the mighty resources of the Government and the legal talent of the Government to defend their own personal fraudulent acts. In that sense; I think I and not defense counsel represents the Government because if I am sustained in this action, the Government wins as well as I do. The only ones that lose are the bureaucrats whom I contend have committed fraud.

Now, in that respect, plaintiff filed interrogatories to determine the identity of the bureaucrats, the administrative officials who committed these acts which plaintiff alleges are fraudulent. Now, those interrogatories, Your Honor, were not filed necessarily with any intent for further discovery.

THE COURT: That question has been disposed of by another judge. They were held in abeyance pending disposition of this motion.

[19] MR. HANDLER: That is correct, Your Honor. That is true, Your Honor.

THE COURT: Let's not get into that argument.

MR. HANDLER: Well, what I wanted to bring out is this, Your Honor, that my intent was merely to determine the identity of the administrative officials against whom I make these charges of fraud.

I think it is an indication of bad faith for these officials to decline to identify themselves.

Now, if these officials did not act in good faith in discharging plaintiff, the discharge is invalid. Bad faith is a -- rather, the Government officials regardless even if they had a bona fide reason, which is failure to accept a transfer, regardless of such a reason if the officials did not act in good faith in carrying out their duties, the discharge is void.

Now, one of the reasons I want to know their identity is to particularize my allegations of fraud. The rules require that allegations --

THE COURT: Mr. Handler, as I said, I am not going to get into that proposition. You have already had a ruling by a judge of this Court. Your interrogatories are held up pending disposition of this motion. Let's stay with this [20] motion, please.

* * *

[Mr. Handler:] *** I would like to add -- I have not referred to it in my memorandum of points and authorities -- that the letter of decision plainly states that plaintiff was found guilty of "failure to accompany your activity to Detroit," and that is the only thing which the Department of Labor found plaintiff guilty of and that was the basis for his discharge, "failing to accompany your activity to Detroit."

THE COURT: I don't follow this point at all.

MR. HANDLER: Fact No. 1 in the memorandum of points --

[21] THE COURT: You were discharged because you wouldn't go to Detroit, isn't that the fact?

MR. HANDLER: That's right.

THE COURT: I don't get the point you are making.

MR. HANDLER: Well, Your Honor, in point VIII, I discuss the fact that specific violations have specific punishments that go with them and the violation of failure to accompany an activity to Detroit or wherever is punishable by the discharge action "Separation - Failure to accompany activity." So, I simply want to make clear to the Court what my violation was, "Failure to accompany activity" and that my punishment should have been, according to the Federal Personnel Manual, "Separation - Failure to accompany activity to Detroit."

That is the prescribed punishment for plaintiff's violation of "Failure to accompany activity to Detroit." Instead, plaintiff was removed. That is another distinct type of personnel action.

THE COURT: You are drawing a distinction between separation from service and removal?

MR. HANDLER: Yes, Your Honor. I think the --

THE COURT: I have got it now.

MR. HANDLER: That is one of the issues in this case that the Government has not recognized. The removal [22] action effected against plaintiff is more severe than both the prescribed action for my offense, which was failure to go to Detroit, and it was more severe than the action proposed. The proposed action was the prescribed action, "Separation - Failure to accompany your activity."

After proposing the prescribed action, defendants removed plaintiff rather than effecting the prescribed action.

Moreover, in the original letter of notice to plaintiff advising him that charges were being preferred against him, the word "removal" was used. Plaintiff questioned defendants about the word "removal" and pointed out that removal is not the action prescribed for plaintiff's alleged offense.

Defendants recognized the materiality and the validity of plaintiff's complaint by changing their letter of notice and changing the proposal to remove plaintiff to one of proposal to separate him for failure to accompany activity.

Despite that when the action was actually effected, it was the action of removal.

THE COURT: You have no quarrel, do you, with the procedural aspects of the case? You got all the hearings you were entitled to and you had an opportunity to present all your evidence.

[23] MR. HANDLER: I do have a quarrel, a serious quarrel with the procedural aspects of the case.

THE COURT: You were granted all the procedures that were available, were you not?

MR. HANDLER: No, sir.

THE COURT: You didn't get the full run?

MR. HANDLER: I got a Civil Service hearing but I didn't get the prescribed hearing. It wasn't a hearing in good faith. There were several defects in the hearing, which I have enumerated in my opposition to defendants' motion.

Well, let me say this, Your Honor: Plaintiff alleged specifically that he was "removed" rather than "separated for failure to accompany activity to Detroit."

Plaintiff alleged that the action effected was more severe than the action proposed and more severe than the action prescribed.

The Civil Service Commission has never given their finding on that contention. They have never recognized the question. I consider that a procedural defect. Not only did I not get an answer to my complaint, I didn't get recognition of it.

And the same is true of virtually every allegation of defect that I have made.

[24] THE COURT: Well, I think I have the point of your argument, Mr. Handler. I have been through your pleadings very carefully. I think I have heard enough now to get the gist of the case and decide it, but I am going to reserve decision until I have glanced at the record that has been made available in the course of the hearing which was not available before.

* * *

[25] THE COURT: Did you want to add something, Mr. Zimmerman?

MR. ZIMMERMAN: I just wanted to correct one thing, Your Honor.

The Civil Service Commission, in its decision, did treat the claim respecting removal or other, and it appears on page 13 of our summary

of facts. It says, "Since the circumstances in your" -- that is plaintiff's -- "case make clear that you were in fact discharged, the standard terminology whether 'Removal' or 'Separation - Failure to accompany activity to Detroit, Michigan,' used for reporting your discharge on the official notification of personnel action is found by the Board to be inconsequential to the determinations necessary". So they did consider that.

MR. HANDLER: May I comment on that, Your Honor?

THE COURT: Well, I really think I have heard enough of this to get the gist of it and be able to render a decision. I simply want to go through the testimony and make sure I have covered the whole administrative record.

MR. HANDLER: If Your Honor please, this last [26] contention by defense counsel sorely needs an answer.

THE COURT: All right. Go ahead and make your answer, but please make it brief. We have a long morning ahead of us.

MR. HANDLER: I have signed an affidavit in my opposition stating that I can prove fraud beyond any reasonable doubt even if confined to the record.

Now, the sentence that defense counsel has just read is a flagrant fraud. Without pointing to the facts in the case of the record, I can tell you what the record will show if it is inspected carefully.

This sentence indicates that the Civil Service Commission found it inconsequential, whichever of the terminology is used was used to report the action. The fact is that these terminologies are actions and the question is not which action was reported; the question is which action was effected.

The Civil Service Commission has never even -- rather, the Board of Appeals and Review decision, and that is the decision from which this sentence is quoted, that decision never recognizes that the plaintiff was actually "removed." It never recognizes that the action effected against plaintiff is a removal rather than separation for failure

to accompany activity, and it never recognizes that the question is: Is it [27] of any consequence which of those two actions was effected?

They tell the Court here and they told me in their decision, it is of no consequence which action was reported.

Moreover, in this sentence they say as reported on the official notification of personnel action. Now, elsewhere in the record, the Court will find that that terminology "official notification of personnel action" is actually an instrument that effects an action and that the terminology used on this paper was not merely reporting an action, it was effecting it and that it effected a removal rather than "Separation - Failure to accompany activity to Detroit." And the question is, Is the effecting of that action rather than the other action of consequence?

So that this sentence, I say, is a fraud because it attempts to mislead.

THE COURT: Well, I will take that into consideration.

MR. HANDLER: Thank you, Your Honor.

(Whereupon, the hearing on motion was concluded.)

[Filed Jan. 5, 1966]

**PLAINTIFF'S MOTION THAT, SHOULD JUDGMENT BE
ENTERED FOR DEFENDANTS, THE COURT FILE A
MEMORANDUM OPINION STATING THE UNDISPUTED
FACTS AND THE PRINCIPLES CONTROLLING THE
GRANTING OF SAID JUDGMENT**

Comes now plaintiff in proper person and respectfully moves the Court, should judgment be entered for defendants, to file a supporting memorandum opinion stating the undisputed facts and the principles controlling the granting of said judgment.

STATEMENT

The dignity of the Court, the integrity of the United States Attorney and his subordinates, the public image of the Civil Service Commission and the Department of Labor, require that the Court make known the undisputed facts and controlling principles that dictate judgment for defendants. Defendants' motion for summary judgment is signed by the United States Attorney and three of his subordinates. Of that motion, plaintiff's opposing points and authorities states (with documentation):

1. "*** if defendants' motion were granted, it would have to be on points and authorities discovered by the Court -- points and authorities other than those urged by defendants -- because the memorandum of points and authorities 'supporting' defendants' motion for summary judgment fails even to acknowledge, much more to answer, even a single legal issue raised expressly or implicitly by the Pleadings."

2. "Defendants and/or their counsel lie to the Court."

3. "Defendants' entire Argument is based on a lie."

4. "Defendants' entire Argument is knowingly irrelevant."

5. A Civil Service Commission affidavit fraudulently executed or fraudulently induced, was submitted to the Court, on behalf of defendants, by the United States Attorney's Office.

Despite the opportunity presented on December 15, 1965, at the oral hearing of their motion for summary judgment, defendants have failed to refute the allegations above. Defense counsel, in his rebuttal remarks at the oral hearing, did quote from defendants' motion a sentence that ostensibly indicates recognition (but not a ruling thereon) by the Civil Service Commission of a vital issue that plaintiff, at said oral hearing, contended the Civil Service Commission not only failed to rule on, but failed even to recognize. Plaintiff thereupon, in his ensuing reply, demonstrated that the sentence quoted by defense counsel (it had originated in plaintiff's Civil Service Commission decision) was a fraud, intended to deceive — the inescapable inference being that either the

Civil Service Commission sentence had indeed deceived defense counsel, or defense counsel had become a party to the attempted deception.

Depending on the Court's stated findings (or the absence thereof), plaintiff is either an irresponsible slanderer, defamer, and/or libeler — or a responsible public-spirited citizen acting not only in his own cause, but in that of good government.

If true, and if condoned and allowed to become typical rather than unusual, the violations of law by government officials, as described by plaintiff in the instant action, would threaten this nation's form of government and way of life. Accordingly, it is in the public interest, appropriate and desirable, that the Court make known the undisputed facts and controlling principles that dictate judgment for defendants.

A memorandum of points and authorities is attached.

/s/ Wilfred Handler
Plaintiff, pro se

[Filed Jan. 5, 1966]

ORDER

This cause having come before the Court on defendants' motion for summary judgment and plaintiff's opposition thereto; counsel having been heard; and the Court having considered the record and the memoranda filed by the parties, it is this 5th day of January, 1966,

ORDERED:

1. That defendants' motion for summary judgment be, and the same hereby is, granted, and the action is hereby dismissed; and
2. That all motions for discovery heretofore entered in this cause are moot.

/s/ Howard F. Corcoran
Judge

[Filed Jan. 17, 1966]

**PLAINTIFF'S MOTION THAT THE COURT MAKE
ADDITIONAL FINDINGS AND VACATE JUDGMENT:
RULES 52(b), 59(e), F.R.C.P.**

Comes now plaintiff in proper person and, in accord with Rules 52(b) and 59(e), F.R.C.P., respectfully moves the Court to make additional findings and to vacate the judgment for defendants entered on January 5, 1966.

STATEMENT

I — Rule 52(b), F.R.C.P.

Plaintiff's currently pending motion that ". . . Should Judgment Be Entered For Defendants, The Court File A Memorandum Opinion Stating The Undisputed Facts And The Principles Controlling The Granting Of Said Judgment" was filed on January 5, 1966, prior to the entry of judgment for defendants. Said judgment having since been entered for defendants on January 5, 1966, without a memorandum opinion, plaintiff now requests findings and the vacating of that judgment in accord with Rule 52(b), F.R.C.P. Plaintiff hereby adopts and makes a part of the instant motion the "Statement" of, and the "Points and Authorities" in support of, plaintiff's pending motion of January 5, 1966, cited above.

Plaintiff respectfully moves the Court:

1. To find as facts, items No. 1 through 5 of the "Statement" of plaintiff's motion of January 5, 1966, cited above.
2. To find as facts, (and to state the pertinent legal principles) the factual allegations of each of the 13 Points enumerated on pages 3 and 4 of Plaintiff's Memorandum Of Points And Authorities In Support Of Opposition To Defendants' Motion For Summary Judgment.
3. To find as facts, plaintiff's assertions recorded on pages 26 and 27 of the transcribed proceedings of the December 15, 1965, hearing on motion; and to otherwise make known the findings of fact (together

with the pertinent legal principles) resulting from those deliberations to which the Court committed itself when it said, as is recorded on page 27 of the cited transcribed proceedings of December 15, 1965: "Well, I will take that into consideration."

II — Rule 59(e), F.R.C.P.

On January 10, 1966, defendants filed and caused to be docketed Government Exhibit B — after the Court had denied plaintiff's motion that said exhibit be filed and docketed, and after summary judgment for defendants had already been entered. What was defendants' motive in filing Government Exhibit B at that time?

On April 8, 1965, in successfully seeking a protective order and in opposing plaintiff's interrogatories to defendants, defendants had promised the Court they would file a motion for summary judgment together with an exhibit consisting of "the certified record of the Civil Service Commission proceedings . . .". Thus it appears that defendants filed (and caused to be docketed) Government Exhibit B not because it adds to their case, which they had already won, but because in avoiding (evading) plaintiff's interrogatories they had committed themselves to file the Civil Service Commission record.

Similarly, it may be said that the rest of the voluminous Civil Service Commission record had been filed in fulfillment of that same commitment, rather than in support of defendants' version of the instant case. (Defendants' very simple version: plaintiff was properly discharged for failure to accept a transfer.) And it follows that defendants' motion for summary judgment itself, promised at the same time and for the same reason that the filing of the Civil Service Commission record had been promised, was filed not because it was warranted or could properly be sustained, but because it had been promised the Court as a basis for avoiding (evading) interrogatories.

Those interrogatories, if answered, would have identified the Civil Service Commission officials responsible for the acts that plaintiff

alleges are fraudulent. To those officials, filing an unsustainable motion for summary judgment, and thereafter losing the case on a cross-motion (implicit or explicit) for summary judgment, would be preferable to their answering the interrogatories and thus identifying themselves. Not until plaintiff's interrogatories had been filed did defendants announce their intention to file a motion for summary judgment — more than a year after their Answer to plaintiff's Complaint had been filed.

The new evidence indicates that defendants filed their motion for summary judgment not with the expectation of securing judgment for themselves, but only with the purpose of evading plaintiff's interrogatories.

A memorandum of points and authorities is attached.

An oral hearing is requested.

/s/ Wilfred Handler
Plaintiff, pro se

[Filed Jan. 20, 1966]

ORDER

Upon consideration of plaintiff's motions that the Court make additional findings pursuant to Rule 52(b) of the Federal Rules of Civil Procedure, and to vacate judgment pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, it is by the Court this 20th day of January, 1966,

ORDERED that said motions be and the same hereby are denied.

/s/ Howard F. Corcoran
Judge

[Filed Jan. 27, 1966]

**PLAINTIFF'S MOTION THAT THE COURT'S ORDER
OF JANUARY 20, 1966, BE STAYED AND VACATED**

Comes now plaintiff in proper person and respectfully prays:

1. That the Court stay its order of January 20, 1966, which denies plaintiff's composite motion for additional findings and the vacating of judgment.
2. That the Court permit defendants a new five-day period in which to file their opposition to plaintiff's said composite motion.
3. Should defendants fail to file said opposition, that the Court treat as conceded plaintiff's said composite motion of January 17, 1966, for additional findings and the vacating of judgment; and that the Court vacate said judgment.

STATEMENT

On January 17, 1966, plaintiff filed a composite motion for additional findings and the vacating of judgment. Defendants filed no opposition. But because the Court's order of January 20, 1966, denied said motion before the expiration of the prescribed time in which defendants might have opposed it, neither may they be said to have conceded it.

Because of the sweeping assertions made in, and adopted by, said motion, absent the Court's premature denial, defendants' failure to oppose said motion forthrightly and unequivocally would have labeled defendants' entire defense in the instant action a fraudulent sham and an imposition upon the Court. Summary judgment for defendants would unquestionably have been vacated and replaced with summary judgment for plaintiff.

It is essential, therefore, that the record show unequivocally whether defendants concede or oppose plaintiff's motion of January 17, 1966. Indeed it is unjust to defendants and/or defense counsel for the Court to have ruled prematurely on plaintiff's motion and thus to have denied

defendants and/or defense counsel the opportunity to forthrightly oppose (if that is their wish) plaintiff's motion.

The record indicates that, should the Court grant plaintiff's prayers number 1 and 2 stated above, defendants will fail to oppose, and thus concede, plaintiff's motion for additional findings and the vacating of judgment. And the record indicates why defendants will concede the motion: officials in the United States Attorney's Office (defense counsel) will not sign an opposition to said motion: they are no longer willing to sign, for the record, documents that indicate their belief there is good ground to support defendants' position in the instant action. The record indicates that both defendants' Answer and their Motion for Summary Judgment were prepared not by defense counsel, but by attorneys of the defendant Civil Service Commission. The record indicates that now, having read plaintiff's Opposition to defendants' motion for summary judgment, and having concluded therefrom that defendants' case in the instant action is a fraud, as is stated above defense counsel are no longer willing to sign for the record documents that imply their belief that there is good ground to support defendants' position in the instant action.

Plaintiff's opposition to defendants' motion for summary judgment was filed on November 15, 1965; since that time defense counsel have failed to sign a single document for the record. During that time, plaintiff has filed four motions (composite motions being counted as a single motion); defendants have failed to oppose any of them. Despite their unwillingness to sign and file an opposition thereto, defense counsel did contrive to make known to the Court their opposition to the first of these motions, which had been filed by plaintiff on December 20, 1965. On December 28, 1965, the last day for opposing said motion, defendants served on plaintiff and submitted to the Judge, in violation of Rule 58, F.R.C.P., an unsolicited, unsigned, not for the record, proposed form of summary judgment in favor of defendants, which read in part: ". . . all . . . pending motions in this cause are moot." (See Plaintiff's

Exhibit 19, submitted with one of two motions filed on January 5, 1966.) Plaintiff's motion of December 20, 1965, "opposed" as just described, was denied.

Plaintiff's remaining three motions filed since November 15, 1965, although not opposed, may not be said to have been conceded only because of fortuitously dated orders and rulings by the Court. The record indicates that, absent these fortuitously dated orders and rulings, plaintiff's motions would still have been unopposed for the reason described above.

A memorandum of points and authorities is attached.

An oral hearing is requested.

/s/ Wilfred Handler
Plaintiff, pro se

[Filed Feb. 8, 1966]

ORDER

Upon consideration of the pltf.'s motion that the court's order of January 20, 1966 be stayed and vacated filed herein Jan. 27, 1966, it is this 8th day of February, 1966,

ORDERED that the said motion be, and the same hereby is denied.

Robert M. Stearns,
Clerk

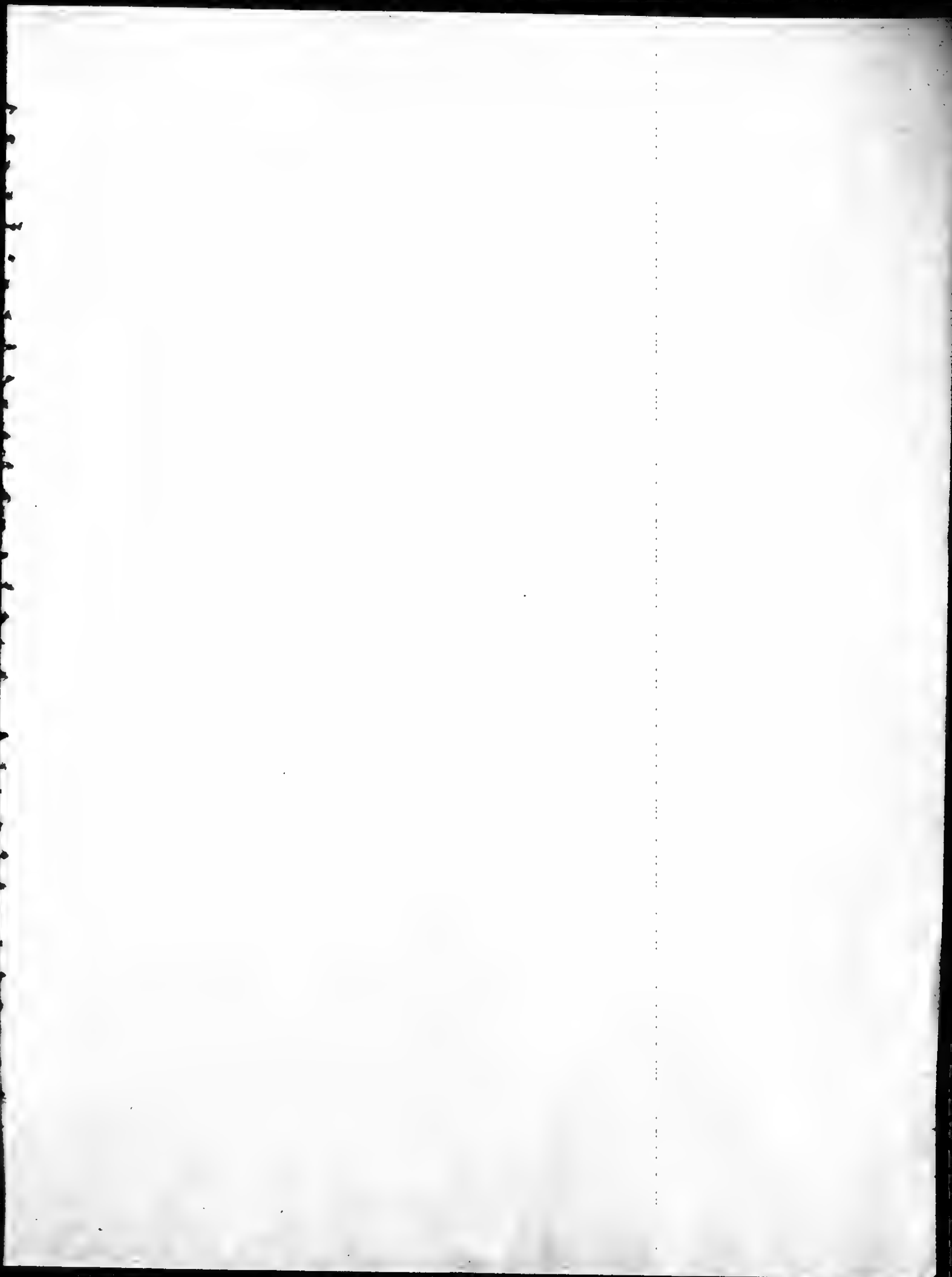
Howard F. Corcoran
Presiding Judge

[Filed Mar. 7, 1966]

NOTICE OF APPEAL

Notice is hereby given this 7th day of March, 1966, that plaintiff, WILFRED HANDLER, hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 5th day of January, 1966 in favor of defendants, SECRETARY OF LABOR, et al. against said plaintiff, WILFRED HANDLER.

/s/ Wilfred Handler
Plaintiff pro se



BRIEF FOR APPELLANT

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 20,219

WILFRED HANDLER,
Appellant,

v.

SECRETARY OF LABOR, et al.,
Appellees.

APPEAL FROM A JUDGMENT OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals
for the District of Columbia Circuit

FILED OCT 13 1966

Nathan Paulson
CLERK

WILFRED HANDLER
P. O. Box 1052
Baltimore, Maryland 21203

Appellant, pro se

(i)

QUESTIONS PRESENTED

1. Under Sec. 14 of the Veterans' Preference Act, 5 USC 863, does a removal from Federal employment have warrant or sanction in law where:

(a) The removal action is more severe than the one proposed, and, for the offense involved, more severe than the one prescribed by the Federal Personnel Manual?

(b) In being granted the statutorily prescribed opportunity to answer the reasons for his proposed discharge, the employee is advised that the directive changing his post of duty, the failure to obey which is the stated reason for his proposed discharge, was approved by the Secretary of the Federal Agency, and said advice is false?

(c) The transfer order, the refusal to obey which is the reason for employee's removal, is unauthorized and fraudulent?

(d) The Civil Service Commission failed to consider certain of the employee's evidence because, after submission to the Commission, the evidence became "missing"?

(e) The Civil Service Commission findings sustaining the employee's removal are fraudulent?

2. Under Rules 30(b), 33, FRCP, may a protective order be granted the Government regarding interrogatories, if the motion for said protective order is served and filed unseasonably, i.e., 15 days after the interrogatories were personally served, on the same day answers to the interrogatories are due? And if good cause for the protective order is not shown?

3. In a Federal-employee-removal case — where the law (Sec. 14 of the Veterans' Preference Act) requires Civil Service Commission approval — may the Government be granted a summary judgment when there is a genuine issue as to whether the Civil Service Commission's sustaining of the removal was done in good faith?

INDEX

QUESTIONS PRESENTED	i
CITATIONS	viii
JURISDICTIONAL STATEMENT	1
STATEMENT OF THE CASE	2
I. Background	2
1. General	2
2. Appellant Files Intra-Labor Grievance	3
3. Appellant Appeals Grievance Decision to the Secretary of Labor	4
4. The Secretary of Labor's Grievance- decision	5
5. The Secretary's Grievance-decision Is Cited by Labor as the Authority for Ap- pellant's New Transfer to Detroit	6
6. Appellant Fails To Report to Detroit; He Is Removed	7
II. Appellant Alleges to the Civil Service Commis- sion That His Transfer to Detroit Is a Nullity Because the Secretary of Labor's Grievance- Decision, Cited by Labor as the Authority for the Transfer, Is a Forgery. The Civil Service Commission Fails To Rule on the Allegation	8
1. Forgery of "A.J.G." Alleged by Appellant to Civil Service Commission	8
2. Authenticity of "A.J.G." Had Been Ques- tioned Previously in Labor	10
3. The Civil Service Commission Asks Labor for Authentication of "A.J.G."	11
4. Labor Fails To Give Appellant Original Authentication of "A.J.G."	13
5. The Civil Service Commission Fails To Rule on the Authenticity of "A.J.G."	14
III. The Discharge Action Proposed Is Different From the One Effected. The Civil Service Com- mission Refuses To Distinguish Between the Two Actions	15

STATEMENT OF THE CASE (Continued):

1. The Action Proposed Against Appellant Is Removal	15
2. Proposal of Removal Is Cancelled and Replaced With Proposal of "Separation — Failure To Accompany Activity"	16
3. The Action Effected Is Removal	17
4. Appellant Alleges to Civil Service Commission, With Documentation, That the Action Effected Is More Severe Than the One Proposed; the Commission Fails To Distinguish Between the Two Actions	17
IV. Appellant Alleges to Civil Service Commission That, Instead of the Prescribed Ten Days To Answer the Proposal He Be Separated, He Was Allowed Only Three Days. The Commission fails To Rule on Appellant's Allegation or the Basis Thereof	21
1. Appellant Seeks Clarification of: "... the Secretary [of Labor] Affirmed That Your Post of Duty [is] Detroit. . . ."	21
2. Appellant Requests Reasonable Time To Answer Charges Preferred Against Him	22
3. Appellant Illustrates to Civil Service Commission <u>How</u> He Allegedly Received Not Ten, but Three Days, To Answer Labor's Separation Proposal	24
4. Appellant's Explanatory Testimony	24
5. Civil Service Commission Fails To Rule on Appellant's Allegation, or the Basis Thereof, That He Received Only Three Days To Answer Separation Proposal	25
V. Proceedings Below	26
STATUTE, RULES, REGULATIONS, AND PROVISIONS OF FEDERAL PERSONNEL MANUAL INVOLVED	27
STATEMENT OF POINTS	28
SUMMARY OF ARGUMENT	29
ARGUMENT:	
A. Appellant, Not the Government, Is Entitled to Judgment as a Matter of Law	32

(v)

ARGUMENT (Continued):

I.	Since the Discharge Action Proposed Against Appellant Was Different From the One Ultimately Effected, the Civil Service Commission Violated Its Own Procedural Requirements of the Veterans' Preference Act When It Refused To Rule on the Comparative Severity of the Two Actions	32
II.	In Removing Appellant, the Department of Labor Violated the Civil Service Commission's Express Procedural Requirements of the Veterans' Preference Act By Effecting a More Severe Action Than the One Proposed	32
1.	Introduction	32
2.	The Adverse Action Effected May Not Be More Severe Than the One Proposed	33
3.	The Personnel Action Proposed Against Appellant and the One Subsequently Effected Are Two Different Actions. The Civil Service Commission's Refusal To Evaluate Their Comparative Severity Renders Appellant's Removal Unlawful	35
4.	The Action Effected Against Appellant (Removal) Is in Fact More Severe Than the One Proposed (Separation — Failure To Accompany Activity)	35
5.	Need the Dismissing Agency and the Civil Service Commission Distinguish Between Different Types of Discharge Actions?	41
6.	The Government Is Bound by the Federal Personnel Manual	41
III.	In Removing Appellant, the Department of Labor Deliberately Gave Him None of the Required Time for "Answering" Reasons for Such Proposed Action. (Sec. 14, Veterans' Preference Act of 1944)	42
IV.	In Removing Appellant, the Department of Labor Deliberately Gave him None of the Required "30 days' advance written notice . . . [of] such proposed action." (Sec. 14, Veterans' Preference Act of 1944)	42
1.	Introduction	42
2.	Since the Action Effected Is More Severe Than That Proposed, Appellant Received Neither Notice of, Nor Time To Answer Reasons for, the Action Effected	43

ARGUMENT (Continued):

3.	Need the Dismissing Agency and the Civil Service Commission Distinguish Between Different Types of Discharge Actions?	44
4.	The Defect Was Deliberately Perpetrated	45
V.	In Removing Appellant for His Failure To Report to a New Post of Duty, Labor Exceeded Its Legal Discretionary Authority by Effecting a More Severe Consequence Than That Prescribed by the Federal Personnel Manual. The Civil Service Commission Failed To Reach the Question	46
1.	Introduction	46
2.	Appellant Was Charged with Only One Offense; Failure To Accompany Activity to Detroit.	47
3.	The Action Effected Against Appellant Is More Severe Than That Prescribed by the Federal Personnel Manual.	47
4.	The Civil Service Commission Failed To Reach the Question	48
5.	Appellant's Removal Is Without Warrant or Sanction in Law	48
VI.	In Removing Appellant, Labor Allowed Him Only a Small Part of the Prescribed Time for Answering Reasons for the Proposed Action. The Civil Service Commission Failed To Reach the Question.	49
1.	Introduction	49
2.	Discussion	50
VII.	Appellant's Transfer from Washington, D.C., to Detroit Was Unauthorized, Unlawful, and Fraudulent; Hence Appellant's Failure To Honor Said Transfer Is Not Such Cause for His Removal ". . . As Will Promote the Efficiency of the Service . . ." (Sec. 14 of the Veterans' Preference Act).	52
1.	Introduction	52
2.	Labor Cites Its Authority for Transferring Appellant to Detroit: The Secretary of Labor's Grievance-decision ("A.J.G.")	53
3.	Appellant Alleges to the Civil Service Commission That the Secretary's Grievance-decision Is a Forgery	53

(vii)

ARGUMENT (Continued):

4.	The Civil Service Commission's Appeals-examiner Implicitly Agrees with Appellant	53
5.	Labor Agrees with Appellant: If Labor's Cited Authority for Appellant's Transfer ("A.J.G.") Was Not Authentic, Appellant's Transfer Was Invalid. Labor Ostensibly Authenticates "A.J.G."	53
6.	Appellant Alleges to the Civil Service Commission That Labor's Evidence "Authenticating" the Secretary's Grievance-decision ("A.J.G.") Is Inadmissible	54
7.	The Civil Service Commission Fails To Acknowledge That the Secretary of Labor's Grievance-decision Is the Authority for Appellant's Transfer, and Fails To Rule on Appellant's Contention That the Evidence Submitted by Labor To Authenticate It (Item 6 Immediately Above) Is Inadmissible	55
8.	Admissible or Not, the Memorandum From Secretary of Labor Goldberg to David S. North Dated September 12, 1962, Ostensibly Authenticating the Secretary's Grievance-decision Is Factually False. The Memorandum Is a Fraud. The Grievance Decision Is Therefore Not Authenticated	55
9.	Appellant's Grievance Appeal-Brief Was Suppressed; It Was Withheld From the Secretary by Labor's Personnel Officials. Those Same Officials, and Not the Secretary, Authored the Secretary's Memorandum of September 12, 1962, Addressed to Mr. North and Submitted to the Civil Service Commission.	55
VIII.	In Adjudicating Appellant's Appeal of His Removal, the Civil Service Commission Failed to Honestly and in Good Faith Consider Certain Specific Evidence Which, After Its Submission by Appellant, Became "Missing." The Commission's Required Approval of Appellant's Removal Is Therefore Invalid. (Sec. 14, Veterans' Preference Act.)	56
IX.	The Appeals Examining Office Decision of December 11, 1962, and the Board of Appeals and Review Decision of June 4, 1963 — the Civil Service Commission "Findings and Recommendations" Sustaining Appel-	

ARGUMENT (Continued):

lant's Removal — Are Demonstrably Fraudulent. Appellant's Removal Is Therefore Unlawful. (Sec. 14, Veterans' Preference Act)	57
B. There Is a Genuine Issue as to a Material Fact	58
X. Since the Government's Objections to the Employee's Interrogatories and/or Its Motion for a Protective Order Were Untimely and Unseasonable, and Since the Government Failed To Show Good Cause for a Protective Order, the Lower Court Erred in Granting Government's Motion for a Protective Order.	58
XI. Since the Civil Service Commission's Good Faith in Adjudicating Appellant's Appeal to It Was at Issue, Granting the Government's Motion for Sum- mary Judgment Was Error	59
CONCLUSION	59

CITATIONS

CASES:

Watson v. United States, 162 FS 755, 142 Ct Cl 749 (1958)	42
Service v. Dulles, 354 U.S. 363, 77 S.Ct. 1152 (1957)	42
Reynolds v. Lovett, 91 App. D.C. 276, 277, 201 F.2d 181, 182 (1952)	57

STATUTE:

* Sec. 14, Veterans' Preference Act of 1944, as Amended, Act of June 27, 1944, 58 Stat. 390; 61 Stat. 723; 5 U.S.C. 863(i), 2, 8, 28, 29, 31, 33, 35, 41, 42-46, 49, 52, 56, 57, 60	
* Sec. 19, Veterans' Preference Act of 1944, 58 Stat. 391; 62 Stat. 575; 5 U.S.C. 868	41

RULES:

Rules 30(b), 33, F.R.C.P.	(i), 58
-----------------------------------	---------

REGULATIONS:

5 C.F.R. 22 (1949 Edition, as of Jan. 1, 1961)	33
5 C.F.R. 22.203 (1949 Edition, as of Jan. 1, 1961).	49
5 C.F.R. 22.401 (1949 Edition, as of Jan. 1, 1961).	54

* Authorities chiefly relied upon are marked by asterisks.

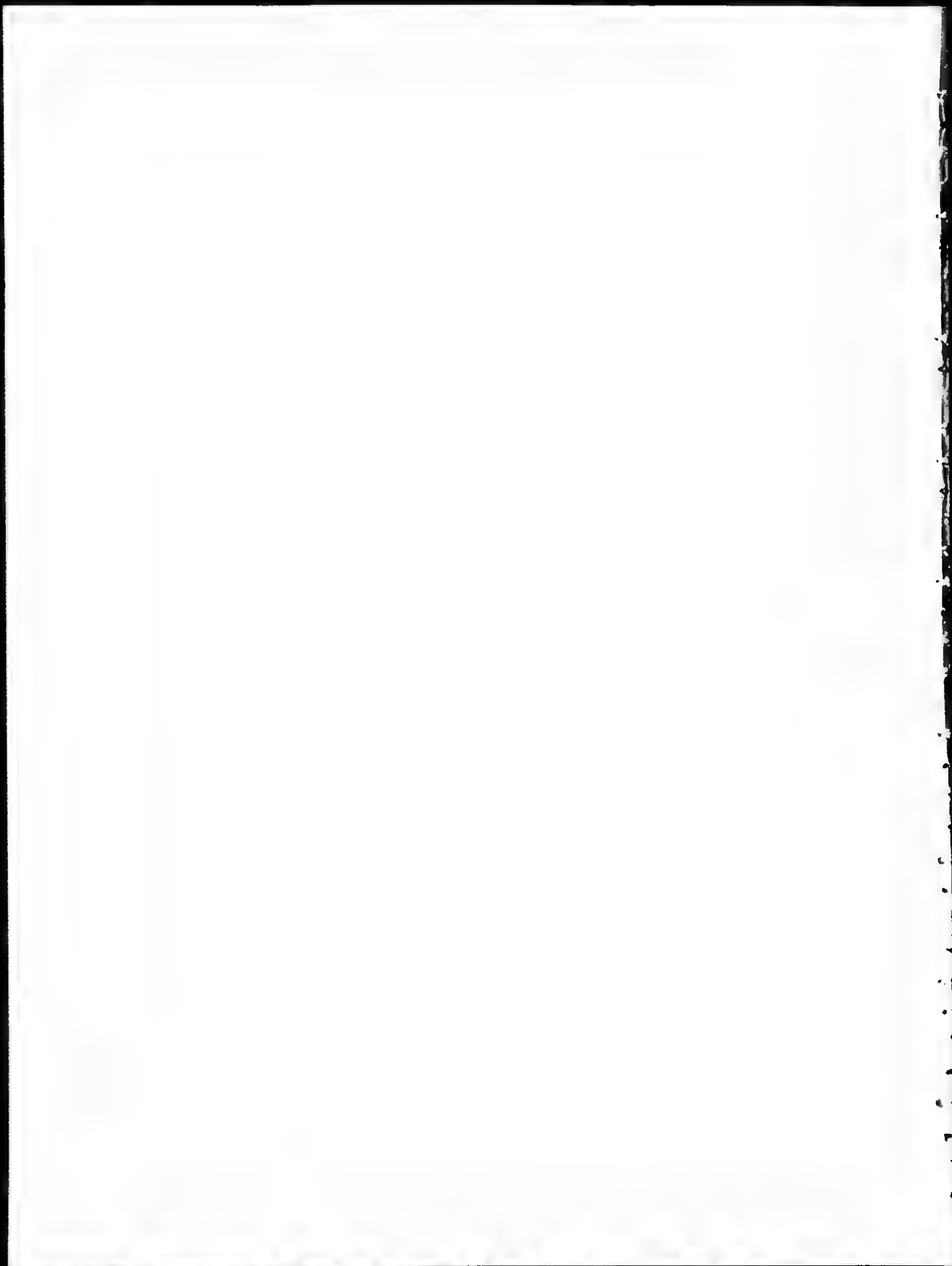
CITATIONS (Continued):

FEDERAL PERSONNEL MANUAL:

Page R-1-7, dated April 14, 1961	39
Page R-1-7, dated May 1, 1962	39
Page R-1-14, dated July 19, 1960	36
Page R-1-14.01, dated May 25, 1959	36
Page R-1-34.19, dated May 1, 1962	18 (Footnote), 38
Page S-1-3, dated January 18, 1961	33
Page S-1-4, dated January 18, 1961	33
Page S-1-15, dated May 1, 1962	34, 37, 38
Page S-1-16, dated May 1, 1962	34, 36
Page S-1-17, dated July 17, 1961	34, 36, 37
Page S-1-18, dated June 20, 1962	37
Page S-1-31, dated July 25, 1961	33, 34
Page S-1-32, dated July 25, 1961	34
Page S-1-33, dated November 17, 1961	34, 47
Page X-4-1, dated April 18, 1958	18 (Footnote), 40
Page X-4-2, dated April 18, 1958	40
Page Z1-211, TS 478	41

MISCELLANEOUS:

Pre-recorded Statement of Civil Service Commission Chairman John W. Macy, Jr., radio-broadcast November 28, 1965	48, 49
--	--------



United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 20,219

WILFRED HANDLER,
Appellant,

v.

SECRETARY OF LABOR, et al.,
Appellees.

APPEAL FROM A JUDGMENT OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

This appeal is from an order of the United States District Court for the District of Columbia (Corcoran, J.) granting defendants' motion for summary judgment (JA 229). The order appealed from was entered on January 5, 1966 (JA 229), and a notice of appeal was filed March 7, 1966 (JA 236).

Jurisdiction below was founded upon Secs. 1361, 2201, and 2202 of Title 28, United States Code (JA 19, 20). This Court has jurisdiction pursuant to 28 U.S.C. 1291.

STATEMENT OF THE CASE

I. Background

1. General

Effective August 3, 1962, the United States Department of Labor (Labor) removed appellant from his Government employment with that agency (JA 5, 20). Appellant sought a determination below that his removal was illegal, and that he was entitled to reinstatement and to back pay. He asked for an injunction directing the Secretary of Labor to restore him to the position in Washington, D.C., from which he had been illegally removed (JA 19,20).

Prior to his removal, with the exception of three years of military service in the U. S. Marine Corps during World War II, appellant had been a classified civil service employee of the United States from January or February, 1942 until August, 1962. On the latter date, when he was removed by Labor, he was entitled to preference under the Veterans' Preference Act of 1944 (JA 5, 20).

In June, 1960, appellant (then an Internal Revenue Agent) had transferred from the Internal Revenue Service to the Department of Labor's Bureau of Labor-Management Reports (BLMR). Appellant had career status in his new Labor position of General Investigator GS-12; his post of duty was Washington, D.C. (JA 6, 20).

Later, most of the investigators with jobs identical to that of appellant were reassigned from Washington, D.C., to field offices throughout the United States. One of those reassignments was that of appellant, whose reassignment to Detroit was to be effective April 30, 1961. But the effective date of the reassignment was deferred, "... both at the pleasure of the Bureau (BLMR) and the pleasure and request of Mr. Handler. The deferment was mutually agreeable. There was no problem on that." (JA 6, 20)

2. Appellant Files Intra-Labor Grievance

Thereafter, on June 7, 1961, appellant's immediate supervisor orally advised him that his reporting date to his new post of duty in Detroit would be set at June 12, 1961, and that written confirmation would follow. Appellant thereupon advised his supervisor that he had decided to avail himself of the Department of Labor's prescribed grievance procedures, and that he was filing a grievance protesting his re-assignment to Detroit (JA 6, 21).

Later, that same day (June 7, 1961), at about 2:00 or 2:30 p.m., appellant's supervisor handed him a memorandum from appellant's Division Chief. The memorandum was dated June 7, 1961, and read in part as follows: "... you are now advised that you are to report to your new post of duty at Detroit, Michigan, effective 8:15 tomorrow morning, June 8, 1961. Any ... leave arrangements should be made with the Area Director at Detroit." (JA 6, 21)

Still later the same day (June 7, 1961), in a memorandum answering that of the Division Chief, appellant confirmed the filing of his grievance and noted that it was obviously impossible for him to be in Detroit at 8:15 the following morning (JA 6, 21).

And still later that day appellant received the Division Chief's answering memorandum which stated that appellant's Detroit reporting-date had been deferred from June 8 to June 12, 1961 (JA 7, 21).

And then by memorandum dated June 9, 1961, from his Division Chief, appellant was advised: "You have presented a grievance concerning your reassignment to the Detroit Area Office. In accordance with the Personnel Instruction No. 6 which provides that any pending or proposed personnel action ... which has been made the subject of a grievance ... shall not be consummated pending settlement of the grievance ... My memo of 6-7-61 which directed you to report to the Detroit Area Office Monday, 6-12-61, is postponed pending the outcome of your grievance." (JA 7, 21)

In his October 9, 1961, decision of appellant's grievance, the BLMR Commissioner ruled that appellant's reassignment to Detroit should proceed. The decision set his Detroit reporting-date at November 6, 1961, so that he might attend a training class in Washington, D.C., scheduled to end on Saturday, November 4, 1961 (JA 7, 21).

3. Appellant Appeals Grievance Decision to Secretary of Labor

Appellant's Detroit reporting-date was deferred again, in accord with Labor's Personnel Instruction No. 6, when appellant announced his intention to appeal the grievance decision to the Secretary of Labor (JA 7, 21).

Appellant requested that he be excused from attending the training class cited two paragraphs above, so that he might take annual leave to expedite the writing of his grievance-appeal to the Secretary of Labor. This request was denied (JA 184, 185).

Thereafter, on December 13, 1961 (the delay from October 9 is attributable not to appellant, but to Labor), exercising his right of appeal prescribed by Labor's Personnel Instruction No. 6, appellant filed a petition for review by the Secretary of Labor of the BLMR Commissioner's October 9, 1961, grievance decision to reassign appellant from Washington, D. C., to Detroit (JA 7, 21).

Appellant's petition to the Secretary consisted of a 52 page brief (Compl. & Ans. Pars. 31-5(b), JA 14, 22). Labor's Office of Personnel Administration (OPA) and appellant had specifically agreed that the petition to the Secretary would "include [appellant's] written comments and analysis of the [BLMR] Commissioner's [grievance] decision [that appellant be transferred to Detroit as of May 7, 1962]." (JA 137) Labor's OPA granted appellant 2-1/2 days of official time to prepare his brief (JA 140). As required by Labor's Personnel Instruction No. 6, appellant submitted the brief through Labor's OPA (Compl. & Ans. Pars. 31-5(b), JA 14, 22).

Labor's OPA thereafter addressed the following memorandum to the Secretary of Labor:

"February 1, 1962

To: The Secretary
From: Edward J. McVeigh; Director of Personnel.

Mr. Wilfred Handler, of the Bureau of Labor-Management Reports, has appealed to you from Mr. Holcombe's decision in the matter of his grievance in which he alleged he was unjustly reassigned from Washington, D.C. to Detroit, Michigan. Under the grievance procedure, Mr. Handler is permitted to appeal to the Secretary for a review of the record.

Mr. Handler's reassignment was proposed as a part of the decentralization of the Division of Financial Investigation. Mr. Handler requested and was accorded a hearing as provided in the grievance procedure. The Hearing Committee unanimously recommended Mr. Handler be reassigned as proposed.

To deal with this appeal, I recommend that you designate a staff member within the Office of the Secretary to make an analysis of the complete record and to make appropriate recommendations for its disposition. Attached is a memorandum designating Mr. David S. North to perform this function in this case.

Attachment:

HEF:EJM:jer

cc: Mr. McVeigh, Mr. Roberts, Mr. Hale" (Compl. & Ans. Pars. 13, JA 7, 8, 21)

4. The Secretary of Labor's Grievance-decision

Two months later still, on April 2, 1962, Labor's OPA forwarded to appellant a photo copy of the Secretary's ostensible decision of appellant's grievance (JA 9, 21).

The Secretary's ostensible decision appears on a typewritten mem-

orandum dated February 27, 1962, to "The Secretary" from David S. North. In that memorandum, Mr. North makes specific recommendations to the Secretary of Labor for disposition of appellant's grievance. In the upper portion of the memorandum's first page is handwritten: "OK A.J.G. 3/30/62." (JA 9, 21) (For photo copy, see JA 145)

Mr. North's specific recommendations, which, as just described, ostensibly became the Secretary's grievance-decision when "OK A.J.G." was written thereon, were:

A. During a thirty-day period, Labor's Director of Personnel (OPA) should make a Department-wide canvass of all its bureaus to see if appellant might be transferred from BLMR — which had found it necessary to assign appellant to a post of duty in Detroit — to another bureau able to assign appellant to a job-vacancy in Washington, D.C., or nearby Maryland.

B. During that same thirty-day period, BLMR itself should reexamine its own personnel needs in Washington, D.C., and nearby Maryland, to see if it could now assign appellant to a post in that area.

C. "Should neither of these actions result in a new assignment for [appellant in the Washington-Maryland area] the Bureau of Labor-Management Reports shall assign him where he is needed at the end of the thirty-day period." (JA 143)

5. The Secretary's Grievance-decision Is Cited by
Labor as The Authority for Appellant's New
Transfer to Detroit

By memorandum of April 23, 1962, the Acting Commissioner of BLMR advised appellant that "In accordance with the Secretary of Labor's decision of March 30, 1962 concerning your grievance . . ." the Secretariially prescribed job-canvasses had been made and had uncovered no vacancies in the District of Columbia-Maryland area. The Acting Commissioner's memorandum continued:

"You are *therefore* being assigned to the Detroit Area Office on May 6, 1962. Please report for duty on Monday morning May 7, 1962 to the Area Director . . . , Detroit, Michigan" (Emphasis added) (Compl. & Ans. Pars. 17, JA 9, 21)

By memorandum of May 3, 1962, the BLMR Commissioner affirmed the memorandum just quoted, saying:

"Your official duty status as of the opening of business on Monday, May 7, 1962, as has been directed, is as a Compliance Officer in the Detroit Area Office, Detroit, Michigan.

* * *

"[The Acting Commissioner's] memorandum of April 23, 1962 and this memorandum are *in conformity* with the *Secretary of Labor's decision* of March 30, 1962 concerning your *grievance*." (Emphasis added) (JA 33, 34)

6. Appellant Fails To Report to Detroit; He Is Removed

Appellant did not report for duty in Detroit on May 7, 1962, nor at any time thereafter. Since May 7, 1962, appellant has not been permitted to work in the position in Washington, D.C., from which the Government contends he was transferred to Detroit (Compl. & Ans. Pars. 18, JA 10, 21)

Previously, in a memorandum to the BLMR Commissioner dated May 1, 1962, appellant had told the Commissioner *why* he could not report to Detroit. Of the directive that he report to Detroit, appellant had written:

"I cannot comply.

"The [directive ordering appellant to Detroit] cites as its authority the 'Secretary of Labor's decision of March 30, 1962' concerning my grievance. But . . . [said directive] does not meet the criterion stated in the last sentence of my Petition For Secretarial Re-

view of my grievance, which reads as follows: 'This Petition *must* give Handler something to which he strongly feels he is entitled: a basis on which he can continue his 20 year Federal career, and at the same time retain his respect for himself and for his employer.'" (JA 48)

By memorandum of June 7, 1962, the BLMR Commissioner told appellant: ". . . the Secretary [of Labor] has determined that your movement to Detroit is in the best interests of the Department." (JA 160) Ultimately Labor found appellant guilty of 'failure to accompany [his] activity to Detroit' and, effective August 3, 1962, removed him from his position (JA 41).

Pursuant to Section 14 of the Veterans' Preference Act, appellant appealed his removal to the Civil Service Commission. After a hearing and further appeal, the Commission sustained appellant's removal (Compl. & Ans. Pars. 24-29, JA 11, 12, 22).

II. Appellant Alleges to the Civil Service Commission That His Transfer to Detroit Is a Nullity Because The Secretary of Labor's Grievance-Decision, Cited by Labor as the Authority for the Transfer, Is a Forgery. The Civil Service Commission Fails to Rule on the Allegation.

**1. Forgery of "A.J.G." Alleged by Appellant to
Civil Service Commission**

At his Civil Service Commission hearing about his removal, appellant introduced documentary evidence that the signed "OK A.J.G." — by means of which Secretary of Labor Arthur J. Goldberg had ostensibly adopted as his own the recommendations made to him for the Secretarial decision of appellant's grievance about being transferred to Detroit — had not been written by Secretary Goldberg. And appellant argued that if Labor's officials had intended that appellant accept

"A.J.G." as the Secretary's handwriting, said "A.J.G." was a forgery. Appellant argued further that since Labor officials themselves had cited this "Secretary's" grievance-decision as their authority for transferring appellant to Detroit, and since the grievance decision (OK A.J.G.) was spurious, appellant had not been obliged to honor his transfer to Detroit. Pertinent excerpts from the Civil Service Commission hearing-transcript follow:

"[Mr. Handler:] My first documentary evidence is a memo dated April 2, 1962, from Mr. McVeigh to Handler, and it forwards to me the Secretary -- the alleged Secretarial decision in my grievance with the okay, ajg written on it. That is my first piece of evidence. [JA 197]

* * *

"MR. HANDLER: I have, here, a photostat of a memorandum from the Secretary of Labor to all employees, dated May 1, 1962, and that, also, is initialed ajg, and I offer this in evidence to show the ajg on my secretarial decision is not in the Secretary's handwriting." (JA 198)

"APPEALS EXAMINER: Are you contending that the decision was not made by a responsible official of the Agency, who had delegated authority from the Secretary?

"MR. HANDLER: Yes, I am.

* * *

"[Mr. Handler:] My grievance was with respect to the transfer, and I was entitled to a Secretarial decision or review of my grievance. Now, I ostensibly received a grievance, this is the one that had ajg superimposed on it.

In the letter of April 23, 1962, in which the Department of Labor is transferring me to Detroit, they cite, as authority for that transfer, this decision with the initials ajg superimposed. That is their cited authority for transferring me. I am saying that was not a proper

authority because it was not the Secretary's decision, or if it was, I haven't been informed. Therefore, I am saying my subsequent removal is not proper, because the transfer order itself was not proper, and failure to obey an order that is improper is not a basis for removal." (JA 196)

"[Mr. Handler:] Now, if that is supposed to be the Secretary's signature, I would have to call it a forgery. If it is supposed to be that of a delegated, authorized person, I certainly have a right to know who that person is. Initials written by someone unknown to me mean nothing and I have cited a case during this hearing, Federal case, which indicated that an official can adopt a subordinate's opinion and make it his own, and he adopts it by signing it. So that we cannot say that the Secretary adopted this decision. Therefore, I think that my transfer was without authority, because the Department's own regulations require that I get a Secretarial review of my grievance before the matter is disposed of." (JA 212)

2. Authenticity of "A.J.G." Had Been Questioned Previously in Labor

Earlier, immediately after having been advised by memorandum of April 23, 1962 (Item I-5 above), of his transfer to Detroit "In accord with the Secretary of Labor's decision concerning your [appellant's] grievance . . .," appellant had first questioned the handwriting of "OK A.J.G." At that time, in a memorandum dated April 25, 1962, addressed to Labor's Director of Personnel, appellant had asked: "In whose writing is the notation: 'OK A.J.G. 3/30/62'? (It does not appear to be in the Secretary's hand.)" (JA 52) In an answering memorandum, the Director of Personnel had answered: "I believe . . . the notation of approval and the initials thereon were placed there either by the Secretary or a person empowered by him to dispose of the matter." (JA 66)

Pertinent excerpts from the Civil Service Commission hearing-transcript:

"APPEALS EXAMINER: Before you go further, can you tell me whether or not the record contains a copy of the Secretary's decision of the grievance.

"MR. FINNEGAN: That is already in the file.

"APPEALS EXAMINER: I was wondering if there is a letter in addition to the one in the file that has the initials, "A.J.G."

* * *

"APPEALS EXAMINER: The one that has the initials across the front of it?

* * *

"APPEALS EXAMINER: And that is the Secretary's decision in your grievance appeal.

"[Mr. Handler:] I don't know if Mr. Finnegan wants to answer that or not. It is the only decision I have, Mr. Bates. It is constantly referred to in memoranda to me as the Secretary's decision of 3/30/62.

You will note that the 'okay . . . A.J.G.,' is also accompanied by the penciled or ink notation, 3/30/62, and that I am sure, at least as far as I have been informed, is the Secretary's decision of my grievance.

As a matter of fact, the cover letter transmitting that states, 'Attached is your Secretary's decision.'" (JA 200, 201)

3. The Civil Service Commission Asks Labor for Authentication of "A.J.G."

Pertinent excerpts from the Civil Service Commission hearing-transcript:

"APPEALS EXAMINER: I have one question here, Mr. Finnegan. Would it be possible for the Agency to submit a statement stating whether or not the decision

issued in the Appellant's grievance appeal was made by the Secretary or approved in his office?

* * *

"APPEALS EXAMINER: Could you submit a statement within seven days of this date stating by whom the decision was made in the Appellant's grievance appeal? That is, the final decision?

"MR. FINNEGAN: Yes.

* * *

"APPEALS EXAMINER: In that connection, could the Agency representative include in his statement, a statement as to whether or not the "A.J.G." was signed only at the direction of the Secretary of Labor or Mr. Goldberg; whether it was written by him or whether it was signed at his direction?" (JA 220-221)

In a letter dated September 18, 1962, to Mr. R. B. Bates, the Appeals Examiner at appellant's Civil Service Commission hearing, Labor's Director of Personnel wrote:

"At the conclusion of Mr. Handler's hearing [on September 12, 1962],¹ you requested the Department to submit the name of the person who signed "A.J.G." on the decision of Mr. Handler's grievance. Enclosed is a copy of a memorandum, dated September 12, 1962, from Secretary Arthur J. Goldberg to Mr. David North, which provides the information requested [see photo at JA 64].

This memorandum establishes that the decision was made by the Secretary. From this it follows that the order of Commissioner Holcombe [transferring appellant to Detroit as of May 6, 1962] was valid, and as such, Mr. Handler was obligated either to comply or to pay the penalty for refusal to do so." (JA 62, 63)

¹ The hearing concluded on September 12, 1962 (JA 87).

4. Labor Fails to Give Appellant Original Authentication of "A.J.G."

The enclosure (copy of Secretary's memo to Mr. North) cited in the quote immediately above is reproduced (photo) at JA 64. Of this memo, in a letter to the Civil Service Commission dated September 26, 1962, appellant wrote:

"6. It should be clearly understood that none of the following comments are intended as a reflection upon Secretary Goldberg:

(a) Mr. McVeigh's enclosure (a photostat of the memorandum dated Sept. 12, 1962, from Arthur J. Goldberg to David S. North) is not satisfactory either as evidence to be considered in the Civil Service Commission's consideration of my appeal, or as an authentication of the Secretary's decision in my grievance.

(1) As evidence relied on by the Agency to justify the adverse action, it should be in affidavit form. The memo was obviously written in response to your request of Mr. Harold Finnegan of Mr. McVeigh's office that the Agency furnish the identity of the person who wrote 'OK, AJG'. Why then, was the memo written to Mr. North?

(2) As part of my grievance decision, the original rather than a photostat of the memo should have been directed to me. Inasmuch as I filed the grievance in question, and inasmuch as I appealed to the Secretary for his decision of my grievance, it appears that it is I who should receive the Secretary's decision. Both the document bearing the controversial 'OK, AJG', and the memo to Mr. North establishing that 'the decision was made by the Secretary', have been given to me in photostatic form. As petitions for Secretarial Review of grievances, must be made through the Director of Personnel, I am sending a copy of this letter to Director of Personnel McVeigh, together with a specific request that Mr.

McVeigh secure for me, from Mr. North, the original of the Secretary's memo of September 12, 1962. Secretary Goldberg's memo to Mr. North ends with this sentence: 'I trust this clarifies the situation.' But Mr. North is not concerned with the need for clarifying the situation; Mr. North had nothing to do with my grievance either before, or after, he fulfilled his special assignment to review the grievance record and make a recommendation to the Secretary. The Secretary apparently misunderstood the situation when he directed his memo to Mr. North. Mr. North will therefore have no reluctance to relinquish the original of the memo in question, particularly when he understands it is in fact a part of the Secretarial decision due me." (JA 68, 69)

Labor's Director of Personnel McVeigh advised appellant that his office, rather than Mr. North to whom it was addressed, had the original of the memo that is reproduced at JA 64; Mr. North referred back to Labor's Director of Personnel McVeigh all of appellant's persistent inquiries as to whether he (Mr. North) ever had received the original of the memo addressed to him by the Secretary, and if so, how, when and why he had disposed of it; Labor's Director of Personnel McVeigh failed to honor appellant's request for the original of the memo (JA 72 through 85).

5. The Civil Service Commission Fails to Rule on the Authenticity of "A.J.G."

Citing only the photocopy of the memorandum reproduced at JA 64, without comment on appellant's contention that said photocopy was inadmissible evidence, the December 11, 1962, decision of the Appeals Examining Office (Civil Service Commission) dismisses appellant's allegation that the Secretary of Labor's grievance-decision ("A.J.G.") is invalid. The Appeals Examining Office decision reads in pertinent part:

"In view of the statement of former Secretary of Labor, Arthur J. Goldberg, we find that the appellant did receive a Secretarial review of his grievance appeal and that his contention that he did not receive such a review must be dismissed." (JA 95)

In his subsequent December 19, 1962, appeal to the Civil Service Commission's Board of Appeals and Review, appellant repeated his allegations of both the invalidity of the "A.J.G." and the inadmissibility of the evidence introduced by Labor, at the request of the Civil Service Commission's Appeals Examiner, to authenticate it (Item (c), JA 109). The subsequent June 4, 1963, decision by the Board of Appeals and Review is silent on both these issues; the decision fails to acknowledge that the Secretary's grievance-decision (AJG) was the authority for the change in appellant's post of duty. Taking no note of the grievance or of the Secretary of Labor's grievance-decision, the Board of Appeals and Review decision says: "The Board considers much of the evidence and many of the representations in the record to be irrelevant or immaterial." (JA 114)

III. The Discharge Action Proposed Is Different From the One Effected. The Civil Service Commission Refuses To Distinguish Between the Two Actions.

1. The Action Proposed Against Appellant Is Removal

In the first sentence of a letter dated May 14, 1962, the BLMR Commissioner notified appellant that it was "proposed to remove" him from his position in the Department of Labor because of his "Failure to accept a new assignment." (JA 151)

In a May 22, 1962, letter to the BLMR Commissioner about the Commissioner's May 14 proposal to remove him, appellant expressed concern over, among other things, the specific personnel action proposed, and over the Commissioner's use of the word "remove". Appellant noted that where the facts are as BLMR had previously represented

them, the personnel action prescribed by the Federal Personnel Manual is "Separation -- Failure to Accompany Activity to (Detroit, Michigan)." And appellant questioned the BLMR Commissioner's use of the word "remove," saying:

"So that I may defend myself against the charge you are preferring against me, please advise explicitly whether I am being removed or separated . . . Please explain fully." (JA 154)

2. Proposal of Removal is Cancelled and Replaced With Proposal of 'Separation -- Failure to Accompany Activity'

The BLMR Commissioner thereupon cancelled his letter of May 14, 1962, proposing to remove appellant, and replaced it with a letter dated June 6, 1962. The May 14 letter had started by advising that it was "proposed to remove" appellant; by contrast, the June 6 letter advised that it was "proposed to separate" appellant from his Department of Labor position (JA 157).

The BLMR Commissioner followed his June 6 letter to appellant with a memorandum dated June 7, 1962, which reads in part as follows:

"This is in reply to your memorandum of May 22, 1962, asking questions about my letter of May 14, 1962.

"I have cancelled my letter of May 14, 1962 by the issuance of one dated June 6, 1962 . . . In answer to your specific question, if the proposed separation takes effect, the Notification of Personnel Action SF-50, in item No. 12 [Nature of Action], would read 'Separation -- Failure to Accompany Activity to Detroit, Michigan', as prescribed by Chapter R-1 of the Federal Personnel Manual." (JA 160)

The action proposed: In short, in his letter of June 6, 1962, amplified by his memorandum of June 7, 1962, the BLMR Commissioner proposed to end appellant's employment with the Department of Labor

by effecting the following action: "Separation -- Failure to Accompany Activity to Detroit, Michigan." (Compl. & Ans. Pars. 19, JA 10, 21)

In his letter of August 1, 1962, the BLMR Commissioner told appellant: ". . . it has been found that the charge of failure to accompany your activity to Detroit, Michigan is sustained. . ." (JA 41)

3. The Action Effected Against Appellant Is Removal

The action effected: Appellant's employment with the Department of Labor was ended by the Department as of August 3, 1962. The action effected was "Removal"; the "Removal" action was effected by the Department by means of a Standard Form 50 (Notification of Personnel Action SF-50) dated August 1, 1962 (Compl. & Ans. Pars. 23, JA 10, 22).

Item No. 12 (Nature of Action) of said Notification of Personnel Action SF-50 reads "Removal." (JA 43)

4. Appellant Alleges to the Civil Service Commission, With Documentation, That the Action Effected Is More Severe Than the One Proposed; the Commission Fails to Distinguish Between the Two Actions.

Regarding the specific discharge action effected, the Board of Appeals and Review (Civil Service Commission) decision of June 4, 1963, says only:

"Since the circumstances in your case make clear that you were in fact discharged, the standard terminology, whether 'Removal' or 'Separation -- Failure to accompany activity to Detroit, Michigan,' used for *reporting* your discharge on the official notification of personnel action is found by the Board to be inconsequential to the determinations necessary for the proper adjudication of your appeal under Section 14." (Emphasis added) (JA 117)

Pertinent excerpts from the transcript of the December 15, 1965, hearing in the District Court on the Government's motion for summary judgment follow:

"MR. HANDLER: . . . The removal action effected against plaintiff is more severe than both the prescribed action for my offense, which was failure to go to Detroit, and it was more severe than the action proposed. The proposed action was the prescribed action, 'Separation - Failure to accompany your activity.'

"After proposing the prescribed action, defendants removed plaintiff rather than effecting the prescribed action.

"Moreover, in the original letter of notice to plaintiff advising him that charges were being preferred against him, the word 'removal' was used. Plaintiff questioned defendants about the word 'removal' and pointed out that removal is not the action prescribed for plaintiff's alleged offense.

"Defendants recognized the materiality and the validity of plaintiff's complaint by changing their letter of notice and changing the proposal to remove plaintiff to one of proposal to separate him for failure to accompany activity.

"Despite that when the action was actually effected, it was the action of removal." (JA 224)

"MR. HANDLER: . . . Plaintiff alleged specifically that he was 'removed' rather than 'separated for failure to accompany activity to Detroit.'

"Plaintiff alleged that the action effected was more severe than the action proposed and more severe than the action prescribed. [²]

² See items (d), (e), JA 45;
See lower half JA 174 to top JA 176; JA 179;
See 2nd, 3rd, 4th pars. of JA 214.

"The Civil Service Commission has never given their finding on that contention. They have never recognized the question. I consider that a procedural defect. Not only did I not get an answer to my complaint, I didn't get recognition of it.

"And the same is true of virtually every allegation of defect that I have made." (JA 225)

"MR. ZIMMERMAN: I just wanted to correct one thing, Your Honor.

"The Civil Service Commission, in its decision, did treat the claim respecting removal or other, and it appears on page 13 of our summary of facts. It says, 'Since the circumstances in your' -- that is plaintiff's -- 'case make clear that you were in fact discharged, the standard terminology whether "Removal" or "Separation - Failure to accompany activity to Detroit, Michigan," used for reporting your discharge on the official notification of personnel action is found by the Board to be inconsequential to the determinations necessary.'

"MR. HANDLER: May I comment on that, Your Honor?" (JA 225, 226)

* * *

"[Mr. Handler:] Now, the sentence that defense counsel has just read is a flagrant fraud. Without pointing to the facts in the case of the record, I can tell you what the record will show if it is inspected carefully.

"This sentence indicates that the Civil Service Commission found it inconsequential, whichever . . . terminology . . . was used to report the action. The fact is that these terminologies are actions and the question is not which action was reported; the question is which action was effected.

"The Civil Service Commission has never even -- rather, the Board of Appeals and Review decision, and that is the decision from which this sentence is quoted, that decision never recognizes that the plaintiff was

actually 'removed.' It never recognizes that the action effected against plaintiff is a removal rather than separation for failure to accompany activity, and it never recognizes that the question is: Is it of any consequence which of those two actions was effected?

"They tell the Court here and they told me in their decision, it is of no consequence which action was reported.

"Moreover, in this sentence they say as reported on the official notification of personnel action. Now, elsewhere in the record, the Court will find that that terminology 'official notification of personnel action' is actually an instrument that effects an action and that the terminology used on this paper was not merely reporting an action, it was effecting it and that it effected a removal rather than 'Separation - Failure to accompany activity to Detroit.' And the question is, is the effecting of that action rather than the other action of consequence?

"So that this sentence, I say, is a fraud because it attempts to mislead.

"THE COURT: Well, I will take that into consideration.

"MR. HANDLER: Thank you, Your Honor.

(Whereupon, the hearing on motion was concluded.)"
(JA 226, 227)

IV. Appellant Alleges to Civil Service Commission That, Instead of the Prescribed Ten Days to Answer the Proposal He Be Separated, He Was Allowed Only Three Days. The Commission Fails To Rule on Appellant's Allegation or the Basis Thereof.

1. Appellant Seeks Clarification Of: ". . . the Secretary [of Labor] affirmed that your post of duty [is] Detroit. . . ."

The BLMR Commissioner's letter of June 6, 1962, proposing appellant's separation reads in part as follows:

"You have the right to answer this charge personally and in writing . . . If you wish to answer the charge personally after answering it in writing . . . you must so state in your written answer to the charge. You will have ten calendar days after the day you receive this letter in which to make written answer to the charge . . . If You ask for an opportunity to answer the charge personally, you will be advised of the time and place for your personal reply." (JA 158)

Concerning the letter quoted immediately above, in a memorandum to the BLMR Commissioner dated June 12, 1962, appellant wrote in part as follows:

"8(b) . . . In your letter of June 6 [proposing appellant's discharge], you state: 'After the Secretary affirmed that your post of duty was Detroit, you were directed by memorandum of April 23, 1962 (from Mr. Kleiler, Acting Commissioner of BLMR) to report to the Area Director, Detroit, Michigan on May 7, 1962.' I was not aware that the Secretary had so affirmed. Please advise me, *specifically*, how and when the Secretary affirmed, before April 23, 1962, that my post of duty was Detroit? Please furnish documentary evidence?"

"Until I receive a satisfactory answer to this memo, particularly to item #8(b) immediately above, I shall assume that the running of time is suspended, regarding the due date of my answer to your letter of June 6, 1962." (JA 163)

2. Appellant Requests Reasonable Time to Answer Charges Preferred Against Him

When the BLMR Commissioner had failed to answer the memorandum just quoted, appellant wrote to the Commissioner on June 21, 1962, asking that he replace the discharge proposal letter of June 6, 1962, so that appellant might have reasonable time to answer the charges preferred against him (JA 164).

But in a later memorandum dated June 28, 1962, the BLMR Commissioner did answer, among other things, item 8(b) quoted two paragraphs above as well as the request cited immediately above, by saying in part as follows:

"8(b) The Standard Form 50 'Notification of Personnel Action' indicating that your post of duty is Detroit is an official action of the Secretary of Labor in accordance with his delegation of authority to the Director of Personnel.

... There is no mandatory requirement in the Federal Personnel Manual that the letter of June 6, 1962 be withdrawn." (JA 167)

In an answering memorandum of July 5, 1962, appellant said: "This is not my answer to the charges you have preferred against me." Appellant again asked that the June 6, 1962, letter preferring charges against him and proposing his separation be replaced, or at least further clarified. And appellant noted that even if this were not done, he should be allowed a new minimum answering period in recognition of the changes effected by the BLMR Commissioner's memorandum of June 28, 1962, a portion of which is quoted in the preceding paragraph.

Of the BLMR Commissioner's explanation 8(b) quoted in the preceding paragraph, appellant's July 5 memorandum said:

"1. Your letter of charges of June 6, 1962, states that *before* I was advised by memo of April 23, 1962, to report to Detroit on May 7, the Secretary had affirmed that my post of duty was Detroit. In my memo to you of June 12, 1962, I requested particulars regarding the Secretary's aforementioned affirmation *prior to April 23, 1962*. In item #8(b) of your memo of June 28, 1962, you give me your answer: namely, the Secretary's affirmation was by means of Standard Form 50.

"But the change of my duty station to Detroit, effective May 6, 1962, is documented by a Standard Form 50 dated April 26, 1962. I believe you will agree, Mr. Commissioner, that April 26, 1962, is *after* rather than *before* April 23, 1962. For this reason, and others which time does not permit me to discuss, in your letter of June 6, 1962, in citing the Secretary's affirmation, before April 23, 1962, of Detroit as my post of duty, you could not have had Standard Form 50 in mind.

"Whether you choose merely to amplify, or to replace, your letter of charges of June 6, 1962, please advise me specifically what you had in mind when, in that letter, you said: 'After the Secretary affirmed that your post of duty was Detroit, you were directed by memorandum of April 23, 1962 to report to the Area Director, Detroit, Michigan on May 7, 1962.' The answer you give in item #8(b) of your memo of June 28, 1962, is incredible."
(JA 169)

3. Appellant Illustrates to Civil Service Commission How He Allegedly Received Not Ten, But Three Days, to Answer Labor's Separation Proposal.

Item No. 1 quoted immediately above from appellant's July 5 memorandum was answered by the BLMR Commissioner's memorandum of July 18, 1962, as follows:

"1. The referenced statement summarizes a chain of events beginning with the recommendations approved by the Secretary on March 30, 1962, which did not overturn my decision of October 9, 1961 assigning you to Detroit, and ending with the facts stated in the first paragraph of Mr. Kleiler's memorandum of April 23, 1962." (JA 172, 173) (For Mr. Kleiler's memorandum, see JA 32, 33; Mr. McVeigh alluded to therein was the Director of Personnel.)

The same memorandum of July 18, 1962, from the BLMR Commissioner noted that of appellant's prescribed ten days for answering the proposal he be separated, only one remained. The memorandum extended the answering period by two days, noting that after the receipt of the Commissioner's memorandum of July 18, 1962, appellant thus had three days in which to answer the proposal he be separated (JA 172). Appellant did not answer (Compl. & Ans. Pars. 22, JA 10, 21).

4. Appellant's Explanatory Testimony

At his Civil Service Commission hearing, under oath, appellant testified that he had received the BLMR Commissioner's memorandum of July 18, 1962, on a Friday, so that the one remaining day for answering fell on a Saturday. Of the BLMR Commissioner's two-day extension, appellant testified:

"What that did was extend the due date from Saturday to Monday, which would have happened in any event, so the Commissioner, there, gives me nothing, but the point actually is this, that he is not giving me another 10 days from the last explanation to answer his letter of proposal." (JA 177)

About the BLMR Commissioner's foregoing July 18, 1962, explanation of the Secretary's alleged affirmation of appellant's transfer to Detroit: appellant testified under oath to the Civil Service Commission that: "... I don't know what the man is talking about.", that the cited Secretary's recommendations of March 30, 1962, "was a decision *not* to send me to Detroit." (Emphasis added -- JA 176); that the explanation had told him nothing, that it had apparently been an attempt to retract Labor's allegation that the Secretary had affirmed appellant's transfer, and that until appellant had received said "retraction" in the BLMR Commissioner's memorandum of July 18, 1962, he "had refrained from answering" the proposal he be separated "until I knew what he meant when he said that the Secretary affirmed that my post of duty was Detroit." (JA 176-178) Appellant further testified under oath: "... I can sincerely say that up until that time, I was actually waiting before making my answer to find out what was meant in the letter of charges when it said the Secretary had affirmed my transfer." (JA 212)

5. Civil Service Commission Fails to Rule on Appellant's Allegation, Or the Basis Thereof, That He Received Only Three Days to Answer Separation Proposal

Both the Appeals Examining Office decision of December 11, 1962, and the subsequent Board of Appeals and Review decision of June 4, 1963, find that appellant received the prescribed ten days for answering the proposal to separate him. But in doing so, neither decision rules on, or acknowledges, either appellant's specific contention, or the stated basis thereof, that he had received only three days (JA 92, 117-118).

V. Proceedings Below

On February 5, 1964, plaintiff-appellant filed his Complaint (JA 5). On April 6, 1964, the Government filed its Answer (JA 20).

Included in the Complaint were allegations that the Civil Service Commission decisions were frauds and part of an "elaborate scheme by the Civil Service Commission to defeat the Veterans' Preference Act and the regulations promulgated thereunder." (JA 15) The identity of the persons who authored and approved those Civil Service Commission decisions was sought by plaintiff-appellant in interrogatories filed March 24, 1965 (JA 23). The interrogatories were served personally on March 24, 1965 (JA 2).

Fifteen days later, on April 8, 1965, the Government filed and served its opposition to the interrogatories and its motion for a protective order holding in abeyance all discovery -- including the interrogatories already served -- until after disposition of the Government's motion for summary judgment then "in process of preparation" (JA 24).

Thereafter, on Thursday, May 6, 1965, the Government filed and served by mail its promised motion for summary judgment (JA 27, 2). Two work-days later, on Monday, May 10, 1965, the Government's opposition to the interrogatories already served, and the Government's motion for a protective order, came on for argument before Judge Youngdahl -- the Court ruled in favor of the Government. Thereafter, on May 11, 1965, an Order granting the Government's motion for a protective order was entered (JA 130, 123).

Thereafter, appellant filed his opposition to the Government's motion for summary judgment (JA 139); said motion came on for argument before Judge Corcoran on December 15, 1965 (JA 221). On December 17, 1965, the Court below ruled "Motion of defendant for summary judgment granted" (Notice of this December 17, 1965, ruling

is inadvertently omitted from the Joint Appendix.), and on January 5, 1966, the Court entered its Order granting said motion for summary judgment (JA 229).

The Order granting the Government's motion for summary judgment is not supported by findings of fact and conclusions of law. Before and after said Order was entered (on January 5, 17, 27, 1966), plaintiff-appellant motioned the Court below for such findings and conclusions (JA 227, 230, 233). Said motions were denied on January 20 and February 8, 1966 (JA 232, 235).

A notice of appeal was filed on March 27, 1966 (JA 236).

STATUTE, REGULATIONS, RULES, AND FEDERAL PERSONNEL MANUAL PROVISIONS INVOLVED

The statute involved in this appeal is Sec. 14, Veterans' Preference Act of 1944, 58 Stat. 390, 5 U.S.C. 863, and Sec. 19 of the same Act; the regulations involved are Title 5, Code of Federal Regulations, Secs. 22.203 and 22.401; the rules involved are Rules 30(b) and 33, F.R.C.P., and various pages of the Federal Personnel Manual. Pertinent portions of each are set forth as follows:

Statute — Appendix "A" *infra*

Regulations — Appendix "B" *infra*

Rules — Appendix "C" *infra*

Federal Personnel Manual — Appendix "D" *infra*

STATEMENT OF POINTS

A. Appellant, Not the Government, Is Entitled to Judgment as a Matter of Law.

I Since the discharge action proposed against appellant was different from the one ultimately effected, the Civil Service Commission violated its own procedural requirements of the Veterans' Preference Act when it refused to rule on the comparative severity of the two actions.

II In removing appellant, the Department of Labor violated the Civil Service Commission's express procedural requirements of the Veterans' Preference Act by effecting a more severe action than the one proposed.

III In removing appellant, the Department of Labor deliberately gave him none of the required time for "answering" reasons for "such proposed action." (Sec. 14, Veterans' Preference Act.)

IV In removing appellant, the Department of Labor deliberately gave him none of the required "30 days' advance written notice . . . [of] such proposed action." (Sec. 14, Veterans' Preference Act.)

V In removing appellant for his failure to report to a new post of duty, Labor exceeded its legal discretionary authority by effecting a more severe consequence than that prescribed by the Federal Personnel Manual. The Civil Service Commission failed to reach the question.

VI In removing appellant, Labor allowed him only a small part of the prescribed time for answering reasons for the proposed action. The Civil Service Commission failed to reach the question.

VII Appellant's transfer from Washington, D.C. to Detroit was unauthorized, unlawful, and fraudulent; hence appellant's failure to

honor said transfer is not such cause for his removal "... as will promote the efficiency of the service . . ." (Sec. 14, Veterans' Preference Act.)

VIII In adjudicating appellant's appeal of his removal, the Civil Service Commission failed to honestly and in good faith consider certain specific evidence which, after its submission by appellant, became "missing." The Commission's required approval of appellant's removal is therefore invalid. (Sec. 14, Veterans' Preference Act.)

IX The Appeals Examining Office decision of December 11, 1962, and the Board of Appeals and Review decision of June 4, 1963 — the Civil Service Commission's "findings and recommendations" sustaining appellant's removal — are demonstrably fraudulent. Appellant's removal is therefore unlawful. (Sec. 14, Veterans' Preference Act)

B. There Is a Genuine Issue as to a Material Fact.

X Since the Government's objections to the employee's interrogatories and/or its motion for a protective order were untimely and unreasonable, and since the Government failed to show good cause for a protective order, the lower Court erred in granting the Government's motion for a protective order.

XI Since the Civil Service Commission's good faith in adjudicating appellant's appeal to it was at issue, granting the Government's motion for summary judgment was error.

SUMMARY OF ARGUMENT

Appellant reaches this Court without answers to, or even acknowledgment of, his allegations of error originally made to the Civil Service Commission.

The facts are not in dispute. The applicable law is clear. But the Civil Service Commission evaded answering, or even acknowledging,

any of the errors alleged by appellant. And, in granting summary judgment to the Government, the lower Court omitted to make, and denied plaintiff-appellant's motions for, findings of fact and conclusions of law.

This is a simple case. Employee was transferred by the Department of Labor (Labor) from Washington, D.C., to Detroit. He failed to accept the transfer. Such a failure is proper grounds for discharge. Employee was thereupon discharged. Procedural requirements were duly observed. This is the substance of the Civil Service Commission's findings.

But in his appeal to the Commission, the employee made numerous allegations of error, documentarily supported, any one of which would serve to invalidate his removal, none of which the Commission has in fact acknowledged. Space permits mention here of only a few.

For example: The specific discharge action effected against appellant (removal) is more severe than the discharge action proposed (separation - failure to accompany activity), more severe than the discharge action prescribed by the Federal Personnel Manual for appellant's offense of failure to accept a transfer. (The proposed action was the prescribed action.) Moreover, in its original notice to employee, Labor had proposed the more severe removal. Employee had objected that it was not the prescribed action. Labor agreed. Three weeks after making it, Labor cancelled its proposal to remove employee; it substituted, instead, a proposal to separate employee for failure to accompany activity to Detroit "as prescribed by . . . the Federal Personnel Manual." (Statement of The Case, Part III - 2)

But without warning or further notice, when the discharge was effected, it was the more severe punitive action, removal, the proposal of which Labor had cancelled (Statement of The Case, Part III - 3). Thus employee-appellant received neither the 30 days' notice of, nor

the opportunity to answer reasons for, the adverse action of removal. Said notice and opportunity are required by Sec. 14 of the Veterans' Preference Act (5 USC 863). The Civil Service Commission's answer to these allegations? Evasion and double talk, masquerading as an answer, but failing in fact even to acknowledge the questions raised. But the masquerade did, apparently, beguile defense counsel (JA 224-227).

And even if prescribed discharge procedures were duly observed — the transfer directive, the failure to obey which is the stated reason for appellant's removal, was unauthorized and fraudulent. Since employee-appellant had appealed his transfer, Labor's regulations required that the Secretary of Labor approve it (Compl. and Ans. Pars. 9, 11; JA 7, 21). The Secretary's ostensible approval was evidenced by his signed initials. But the initials were forged.

Later, at the Civil Service Commission's request, said forgery was "authenticated" by another document "signed" by the Secretary of Labor. The latter document, inadmissible under Civil Service Commission regulations, is a transparent fraud. The Civil Service Commission's answer to these allegations? No answer (Statement of The Case, Part II).

Employee's refusal to honor his transfer was a refusal to become a party to these and other frauds. Rather than being such cause for his discharge ". . . as will promote the efficiency of the service . . ." (Sec. 14, Vet. Preference Act), said refusal was itself an act calculated to promote the efficiency of the service.

Incredible though it seems, the foregoing is merely illustrative. And, as is every material statement made by appellant in the instant Brief, it is documented and supported by the record.

ARGUMENT

A.

APPELLANT, NOT THE GOVERNMENT, IS ENTITLED
TO JUDGMENT AS A MATTER OF LAW

I

Since the Discharge Action Proposed Against Appellant Was Different From the One Ultimately Effected, the Civil Service Commission Violated Its Own Procedural Requirements of the Veterans' Preference Act When It Refused To Rule on the Comparative Severity of the Two Actions.

II

In Removing Appellant, the Department of Labor Violated the Civil Service Commission's Express Procedural Requirements of the Veterans' Preference Act by Effecting a More Severe Action Than the One Proposed.

1. Introduction

For the pertinent facts, generally, see Statement of the Case, Part III.

This defect in appellant's discharge concerns the distinction between the personnel action proposed against appellant — separation for failure to accompany activity to Detroit (Compl. & Ans. Pars. 19, JA 10, 21) — and the one ultimately effected — removal (Compl. & Ans. Pars. 23, JA 10, 22). Appellant will here prove: The proposed action is not punitive — it leaves the employee in a preferred status as to reemployment when vacancies occur in the geographical area of his preference. But the effected action is punitive — it brands the employee as undesirable for reemployment because of past "misconduct, delinquency, unsatisfactory performance of duties . . ."

The action originally proposed against appellant by Labor was the punitive removal. Appellant objected that, under the circumstances

cited by Labor, this action was not appropriate. Labor agreed. Three weeks after making it, Labor cancelled its proposal to effect a removal against appellant, substituting for it a proposal to effect a separation for failure to accompany activity to Detroit "as prescribed by Chapter R-1 of the Federal Personnel Manual."

But when appellant was discharged, the action effected was the punitive removal, the proposal of which it had cancelled. In adjudicating appellant's appeal to it, the Civil Service Commission refused to acknowledge the foregoing facts. It refused to acknowledge the Federal Personnel Manual's express provision that when an adverse action is effected against an employee, it may not be a more severe action than the one proposed.

2. The Adverse Action Effected May Not Be More Severe Than the One Proposed.

Appellant and the Government agree that the controlling law here is Section 14 of the Veterans' Preference Act of 1944 (JA 114). The said Section 14 is implemented by Part 22 of the Civil Service Commission Regulations (5 CFR 22).

Regarding the procedural requirements of Part 22: Page S-1-3 of the Federal Personnel Manual reads in pertinent part: "Section 5 [of Chapter S-1, Federal Personnel Manual] gives specific procedural requirements of Parts 9 and 22 of the Commission's regulations. These state the manner in which the agency *must* proceed in taking actions which are adverse to employees who are covered by Parts 9 and 22." (Emphasis supplied.) Continuing at page S-1-4, the Federal Personnel Manual reads: "Strict adherence to any applicable procedure . . . required by the Commission's . . . regulations is an essential phase of the agency's responsibility." And Appendix C to the cited Section 5 of Chapter S-1 (at page S-1-31) reads in pertinent part: "The steps outlined below *must* be followed in taking any of the personnel actions dis-

cussed in Section 4 . . . against an employee eligible for veteran preference . . ." (Emphasis supplied.) Finally, the cited Section 4 of Chapter S-1 does in fact, at pages S-1-15 and S-1-17, discuss the specific action proposed against appellant (Separation — Failure to Accompany Activity) as well as the one effected (Removal).³ Thus we see that the procedural requirements of appellant's removal are found in Appendix C to Section 5, Chapter S-1 of the Federal Personnel Manual. Here is found the manner in which the Department of Labor "must proceed" with "strict adherence" to prescribed procedure in taking "steps . . . [which] must be followed" in removing appellant.

Regarding the specific procedures prescribed, the said Appendix C to Section 5 of Chapter S-1, at pages S-1-31 to S-1-33 of the Federal Personnel Manual, reads in part:

"A. The employee must be notified in writing of the action proposed . . .

B. . . .

* * *

C. The employee must be furnished a written decision on the proposed action . . . When appropriate, the proposed action may be withdrawn or a less severe action may be substituted without making it necessary to issue a new notice of proposed action. *The agency may not, however, substitute a more severe action than the one originally proposed, nor may it rely on charges or reasons which were not stated in the initial notice; any such change will require that the entire procedure be started anew.*" (Emphasis in the original.)⁴

³ The cited discussion is quoted in part at Item 4A below of the instant Parts I, II.

⁴ Included in the District Court record, but inadvertently omitted from the Joint Appendix, is appellant's quote of the emphasized material to the Civil Service Commission, where it was noted with particularity by the Appeals-examiner. See Government Exhibit "B," pp. 57-58.

The last sentence just quoted makes it crystal clear that there has been a violation of prescribed procedures, which "must be followed in taking the personnel action" effected against appellant, *if* in fact the action effected against applicant is more severe than the one originally proposed. It necessarily follows, therefore, that if the action proposed and the one subsequently effected are two different actions, their comparative severity must be evaluated.

3. The Personnel Action Proposed Against Appellant and the One Subsequently Effected Are Two Different Actions. The Civil Service Commission's Refusal to Evaluate Their Comparative Severity Renders Appellant's Removal Unlawful.

The discharge action effected against appellant is admittedly different from the one proposed (Compl. & Ans. Pars. 19, 23, JA 10, 21, 22). The Civil Service Commission was thus obliged to rule on whether the two actions differed in severity, and if they did, whether the one effected is the more severe of the two, in violation of the rule established at Part 2 immediately above. The Commission's refusal to so rule (Statement of the Case, Part III 4) renders appellant's removal void. (An implied contention that Section 14 of the Veterans' Preference Act does not require the Commission to distinguish between different discharge actions, which may be read into the sentence just cited from the Commission's Board of Appeals and Review decision, is disposed of at Part III, IV, 3 below of the instant Argument.

4. The Action Effected Against Appellant (Removal) Is in Fact More Severe Than the One Proposed (Separation - Failure to Accompany Activity).

The truth of caption 4 immediately above was demonstrated to the Civil Service Commission by appellant in uncontradicted sworn testimony, citing relevant Federal Personnel Manual pages (2nd, 3rd, 4th pars. of JA 214; JA 174, 175, 179).

That the action effected (Removal) is in fact more severe than the one proposed (Separation - Failure to Accompany Activity) is also established here conclusively by direct reference to the Federal Personnel Manual:

A. Terms Defined

(a) "Separations" is defined by the Federal Personnel Manual as follows: "Personnel actions which result in the loss of an employee from the agency." The term is all inclusive. Some of the specific *kinds* of separations listed under this definition are: Death; Removal; Resignation; Retirement; Separation - Abandonment of Position; Separation - Disability; Separation - Failure to Accompany Activity (Federal Personnel Manual, pp. R-1-14, R-1-14.01, dated respectively July 19, 1960, and May 25, 1959). (See also JA 107, sentence in parentheses at end of page.)

(b) "This action [Separation -- Failure To Accept New Assignment] is appropriate for use when an agency has found it necessary to assign an employee to a position in a different geographical or organizational location, and the employee refuses to accept the new assignment." (Federal Personnel Manual, p. S-1-16).

(c) "This action [Separation -- Failure To Accompany Activity] is appropriate for use when it is necessary to separate an employee . . . who fails to accompany his position when it is moved to another organizational or geographical location. The employee's failure to accompany his position in such a transfer of function, does not automatically terminate his services, nor make any resulting separation voluntary. Therefore, it is necessary to comply with appropriate procedures in separating the employee, rather than processing the separation as a resignation or abandonment." (Federal Personnel Manual, Page S-1-17.)

(d) "Removal is the action taken to separate an employee for misconduct, delinquency, unsatisfactory performance

of duties, or other reasons personal to the employee which warrant separation and which are not specifically and completely covered by one of the other types of action." (Federal Personnel Manual, Page S-1-15)⁵

By definition, therefore, removal — the action effected against appellant — is a more severe action than the other two just defined: one, (c) the action proposed against appellant; the other, (b), included here only as incidental information, the action appropriate if in fact only appellant, but not his function or activity, were transferred. At another place in the Federal Personnel Manual, the action of removal is compared with still another action, "termination," as follows:

"Termination

* * *

"Termination is not the proper action to separate an employee because of *gross inefficiency, poor deportment, or other deficiencies personal to the employee that warrant removal*. A person . . . may be separated by 'Termination' for *causes not serious enough to warrant removal.. .*" (Emphasis supplied.) (Federal Personnel Manual Page S-1-17, 18)

The Federal Personnel Manual again demonstrates the severity of a removal action (as compared with other separation actions) by the following examples it provides of remarks that might be entered on a Standard Form 50, Notification of Personnel Action, appropriate to the specific action of removal:

"'Employee was arrested and booked on charges of disturbing the peace and destruction of property; jailed overnight; his name and the charges against him were reported by a newspaper;' 'unexcused tardiness on 11

⁵ Appellant's quote to the Civil Service Commission of this provision of the F.P.M. is in the District Court record, but inadvertently omitted from the Joint Appendix. See Government Exhibit "B," pages 16, 264.

occasions within 30 day period,' 'Reported to work intoxicated 5 times during June, 1961,' 'Employee applied for and received 19 days' sick leave; records of a private company showed that it had employed him on each of the 19 days.'" (Federal Personnel Manual, Page R-1-34.19) (Appellant cited this provision of the F.P.M. and quoted part of it to the Civil Service Commission - JA 175.)

B. Consequences of the Personnel Action Effected Against Appellant, as Compared With Those of the Personnel Action Proposed.

The Federal Personnel Manual tells of the more severe consequences to an employee who is removed rather than separated for failure to accompany activity. A removed employee is inhibited in, if not prevented from, gaining Federal reemployment, while an employee separated for failure to accompany activity enjoys a *preferred* status in seeking Federal reemployment.

(a) *Consequences of Removal:*

"Any *removal* action demands the exercise of responsible judgment so that an employee will not be *penalized out of proportion* to the character of the offense. This is particularly true in the case of a career employee with a previous record of completely satisfactory service.

"*In order that undesirable reemployment may be prevented*, it is important that the special report of *removal* actions prescribed in Chapter R-1 be submitted on a timely basis." (Emphasis supplied.) (Federal Personnel Manual, Page S-1-15)

The special report just alluded to, for preventing undesirable reemployment, is prescribed by Chapter R-1 of the Federal Personnel Manual as follows:

"Submission of Notification of Personnel Action to the Central Office of the Commission.

* * *

"Time of submission. — All required notifications of personnel action as covered by the table must be submitted to the Civil Service Commission once a month on a current basis, *except* [Emphasis in the original] that notifications of the following actions must be submitted as soon as the action takes place:

- (1) *Removals*;
- (2) Resignations while charges are pending or to avoid preferment of charges;
- (3) Separations for disability or disqualifications;
- (4) Any other separation when the circumstances *reflect on the employee's suitability for reemployment . . .*" (Except as noted, emphasis supplied) (Federal Personnel Manual, Page R-1-7, dated April 14, 1961) (Shortly before appellant's removal, the *special* notification of removal, etc., just described had been deleted from the Federal Personnel Manual requirements -- Page R-1-7, dated May 1, 1962 -- not because of any change in the nature of the various personnel actions, but because the *normal* monthly reporting requirements described above had been accelerated so that the Commission had to be notified of *all* reportable personnel actions "no less frequently than the last work day of each week.")

(b) *Consequences of Separation — Failure to Accompany Activity:*

In a program known as Separated Career Employee Program, the Civil Service Commission gives preferred reemployment status to certain employees, separated from the Federal service, who are seeking Federal reemployment. The Federal Personnel Manual begins its description of that program thus:

"This chapter outlines the assistance given by the Commission to help place employees who have been involuntarily separated or furloughed by reduction in

force, *separated or resigned for failure to accompany a transferred function*, or separated for failure to accept new assignment to another commuting area. Such assistance is reserved to persons who have civil service status and who were separated while serving in tenure groups I or II." (Emphasis supplied.) (Federal Personnel Manual, Page X-4-1) ⁶

In describing the specific assistance of "priority certification," the Federal Personnel Manual provides:

"Former employees who were in group I or II in competitive positions when separated or furloughed by reduction in force, who were *separated or resigned for failure to accompany a transferred function*, or who were separated for failure to accept a new assignment to another commuting area, are eligible for this benefit." (Emphasis supplied.) (Federal Personnel Manual, Page X-4-2)

Upon his removal, by the terms of the Federal Personnel Manual just quoted, appellant was not entitled to the benefits of the Separated Career Employee program *only* because a removal action is not one of the favored separation actions enumerated. Had the action proposed against appellant been the action subsequently effected, appellant would have satisfied all the prerequisites to enjoying the benefits of the Separated Career Employee program. This is demonstrated thus:

(a) Separation for failure to accompany a transferred function, one of the favored separation actions just cited, is synonymous with the action proposed against appellant, separation for failure to accompany activity, the "activity" being the "transferred function." For example, as quoted above in item A(c) of the instant item 4, the Federal Personnel Manual, in defining a separation for failure to accompany activity, speaks of an employee's "failure to accompany his position in

⁶ Appellant's quote to the Civil Service Commission of the first sentence is in the record (JA 174-175).

such a transfer of function . . ." And the Commission's decision of December 11, 1962, reads in part: "The Commission's regulations provide for certain benefits in the form of assistance for employees who are separated for failure to accompany their activity." (JA 96)

(b) Appellant had Civil Service status. (Alleged Complaint Paragraph 2, Admitted Answer Paragraph 2, JA 5, 20)

(c) Appellant was separated while serving in tenure group I. (Item 6 of JA 43)

(d) Appellant was in a competitive position: Appellant was a "classified civil service employee" (alleged and admitted, Complaint and Answer Paragraphs 2, JA 5, 20); "'Competitive service' shall have the same meaning as the words . . . 'classified civil service'"; "'Competitive position' shall mean a position in the competitive service." (Federal Personnel Manual, Pg. Z1-211)

5. Need the Dismissing Agency and the Civil Service Commission Distinguish Between Different Types of Discharge Actions?

The question posed by the caption immediately above is discussed in the instant Argument at Part III, IV, 3 below.

6. The Government Is Bound by the Federal Personnel Manual.

"It shall be the authority and duty of the Civil Service Commission . . . to make and enforce appropriate rules and regulations to carry into full effect the provisions, intent, and purpose of this act . . ." (Veterans' Preference Act of 1944, Sec. 19, 5 U.S.C. 868)

The Civil Service Commission's rules, regulations, and the *procedural requirements* prescribed in the Federal Personnel Manual to implement them, are all binding upon both the Department of Labor and the Civil Service Commission. ". . . the Commission's authority and responsibility is to determine whether the employing agency accom-

plished the discharge in accordance with the *procedural requirements* of the law and regulations . . ." (Emphasis added -- Board of Appeals and Review decision, JA 117)

And see *Watson v. United States*, 162 FS 755, 142 Ct. Cl. 749 (1958), and the Supreme Court decision cited therein, *Service v. Dulles*, 354 U.S. 363, 77 S. Ct. 1152 (1957). In each of the cases just cited, employee discharges were held invalid because they violated procedural requirements not of a statute, but of regulations promulgated at the discretion of the employing agency and/or the Civil Service Commission.

Since it is a more severe action than the one proposed, in violation of the express provisions of the Federal Personnel Manual, appellant's removal is unlawful and void.

III

In Removing Appellant, the Department of Labor Deliberately Gave Him None of the Required Time for "Answering" Reasons for "Such Proposed Action." (Sec. 14, Veterans' Preference Act of 1944)

IV

In Removing Appellant, the Department of Labor Deliberately Gave Him None of the Required "30 Days' Advance Written Notice . . . [of] Such Proposed Action." (Sec. 14, Veterans' Preference Act of 1944)

1. Introduction

For the pertinent facts, see Statement of The Case, Part III; these are the same facts cited at Parts I, II of the instant Argument.

Appellant was deliberately and maliciously removed with no advance notice of, and with no time to answer reasons for, his removal.

Each of these defects is a violation of Section 14 of the Veterans' Preference Act of 1944, 5 USC 863, and each renders appellant's removal void.

2. Since the Action Effected Is More Severe Than That Proposed, Appellant Received Neither Notice Of, Nor Time to Answer Reasons For, the Action Effected.

It has been established (Part I, II 4 above of the instant Argument) that the action effected against appellant (removal) is more severe than the one proposed (separation - failure to accompany activity). It follows that appellant was removed with *no* notice of, and with *no* time to answer reasons for, his removal. The statutory requirement of Section 14 of the Veterans' Preference Act (5 USC 863) that there be 30 days' notice of, and that there be reasonable time to answer reasons for, the discharge action proposed is not met if, without a new notice and a new opportunity to answer, there is effected a more severe action than the one proposed.

For example: an employee might be notified of a proposal there be effected against him (as in the instant case) a discharge action that is not disciplinary in nature, that carries with it no stigma of misconduct or inefficiency, but which carries with it, instead, preferred status as to reemployment. To such a proposal, the employee might choose either to make no answer, or to make only a token answer. He has been denied both the requisite notice and the opportunity to answer, however, if in fact there is subsequently effected against him not the proposed discharge action, with its implied promise of preferred reemployment status, but one more severe, one carrying a stigma making reemployment impossible or unlikely, a proposal of which he would indeed have answered forcefully had he been given the prescribed notice and opportunity.

3. Need the Dismissing Agency and the Civil Service Commission Distinguish Between Different Types of Discharge Actions?

In its June 4, 1963, decision of appellant's appeal to the Civil Service Commission, the Board of Appeals and Review said in part:

"Since the circumstances in your case make clear that you were in fact discharged, the standard terminology, whether 'Removal' or 'Separation -- Failure to accompany activity to Detroit, Michigan,' used for reporting your discharge on the official notification of personnel action is found by the Board to be inconsequential to the determinations necessary for the proper adjudication of your appeal under Section 14 [of the Veterans' Preference Act of 1944]." (JA 117)

In the sentence just quoted (and it is the Board's only sentence on the matter), the Board's decision is concerned, irrelevantly, with which of two stated terminologies was used in *reporting* the personnel action, rather than with appellant's stated concern over which of the two actions was *effected*.

Let us charitably assume, *arguendo*, that the Board was not evading and deliberately confusing the issue, and that the quoted sentence demonstrates the Board's deficiency not in integrity or logic, but in the art of communication. Let us assume that the Board meant not that it is irrelevant no matter which of two terminologies was used in *reporting* the action, as it said, but rather that it meant it is irrelevant no matter which of the two actions was effected.

Let us assume that the inarticulate Board meant to voice this proposition: Section 14 of the Veterans' Preference Act does not require the Civil Service Commission, in adjudicating an appeal under that section, to make any distinction between different types of discharges. Such a proposition would contend that Section 14 describes the protected action only as a "discharge," and that although they were *different* discharge actions, nevertheless the action proposed was a "dis-

charge," the action subsequently effected was also a "discharge," so that the requirements of the statute have been met. The invalidity, on its merits, of that proposition is demonstrated by the example given in the second paragraph of Item 2 above of the instant Part III, IV.

But the invalidity of the proposition is perhaps more graphically revealed when applied to a "suspension for more than thirty days," a personnel action covered by the same provisions of Section 14 as is a discharge. A Federal agency might notify an employee of a proposal to suspend him for thirty-one days; after the employee chooses not to exercise his statutory privilege of answering such proposal, the agency might then impose a suspension of a year. Since both the suspension proposed (with due advance notice and opportunity to answer), and the suspension subsequently effected, are, in the language of Section 14, a "suspension for more than thirty days," the Civil Service Commission would, adhering to the legal reasoning hypothesized in the preceding paragraph, find the action compatible with the Veterans' Preference Act.

But a legal proposition giving such a result is clearly untenable. Notice to an employee of, and opportunity for him to answer, a proposal to suspend him for thirty-one days is obviously not the advance notice and opportunity to answer, as contemplated by Section 14, if the subsequent suspension is effected not for the proposed thirty-one days, but for a year.

And the difference between these two suspensions is only a small fraction of the difference between the two discharge actions involved in the instant case. Preferential reemployment consideration was promised by the action proposed, whereas the permanent brand of "undesirable employee" was imposed by the action effected.

4. The Defect Was Deliberately Perpetrated.

Appellant had expressly notified the Department of Labor he was concerned that the action first proposed against him was removal

rather than the prescribed separation for failure to accompany activity. The Department had recognized the materiality of appellant's concern by cancelling its removal proposal, substituting instead a proposal to separate appellant for failure to accompany activity (Statement of The Case, Part III, 1, 2, 3).

Then, with no warning, the Department of Labor effected the removal action, the proposal of which it had cancelled. Since appellant had objected to the proposal he be removed as distinguished from the proposal he be separated for failure to accompany activity, it follows that his answer to the former proposal would have been more vigorous than to the latter. In short, by effecting an action the proposal of which had been cancelled in answer to appellant's objection, the Department of Labor gave appellant no time to answer a proposal of the action effected — there was in fact *no* extant proposal or advance notice of the action effected. Moreover, the facts persuade that this violation of Sec. 14 of the Veterans' Preference Act was contrived, premeditated, and malicious (Statement of The Case, Part III, 2, 3). There is nothing in the record to show otherwise.

V

In Removing Appellant for His Failure To Report to a New Post of Duty, Labor Exceeded Its Legal Discretionary Authority by Effecting a More Severe Consequence Than That Prescribed by the Federal Personnel Manual. The Civil Service Commission Failed To Reach the Question.

1. Introduction

The Civil Service Commission and the Department of Labor are bound by the provisions of the Federal Personnel Manual (FPM) (See the instant Argument, Part I, II, 6 above.) In exercising its undisputed discretionary authority to take corrective action for an employee's failure to report to a new post of duty, Labor may not *legally* exceed

the boundaries of its authority as set by the FPM. Since Labor did exceed those boundaries when it effected against appellant a discharge more severe than that prescribed, appellant's removal is without warrant or sanction in law.

2. Appellant Was Charged With Only One Offense:
Failure to Accompany Activity to Detroit.

The Federal Personnel Manual reads in pertinent part:

"The employee must be furnished a written decision on the proposed action . . .

* * *

[The decision] must state which of the charges are relied on as the reason for taking the adverse action . . ." (FPM, Pg. S-1-33)

Appellant was charged with, found guilty of, and removed because of, only one offense. Labor's letter of decision, dated August 1, 1962, reads in part:

". . . it has been found that the charge of *failure to accompany your activity* to Detroit, Michigan is sustained and therefore that removing you will promote the efficiency of the service. Accordingly, you are hereby notified that you will be removed effective . . . August 3, 1962 . . . *on the basis of that charge.*" (Emphasis added, JA 41)

3. The Action Effected Against Appellant Is More Severe Than That Prescribed by the Federal Personnel Manual.

The action prescribed by the FPM for appellant's alleged offense is Separation — Failure to Accompany Activity; Labor had specifically advised appellant of this prior to removing him (Statement of The Case, Part III 2; for a definition of the prescribed personnel action, see the instant Argument, Part I, II 4A(c) above). The action proposed against appellant was the prescribed action just identified (Compl. & Ans. Pars. 19, JA 10, 21).

It has already been established that the action effected (removal) is different from, and more severe than, the action proposed (Part I, II, 3, 4 above of the instant Argument). And since we have just seen that the action proposed and the one prescribed are one and the same, it follows that the removal action effected against appellant is more severe than the action prescribed by the FPM.

4. The Civil Service Commission Failed to Reach the Question

As established immediately above, two personnel actions are involved here: (a) separation — failure to accompany activity, and (b) removal. The first is the action prescribed, the second the one effected, and the question here concerns the disparity between the two. The Civil Service Commission's Board of Appeals and Review never reaches the question. In its decision, the Board categorizes the name of each of these two actions as "standard terminology." And in one sentence, the Board disposes of the entire question by solemnly finding it "inconsequential" no matter which "standard terminology" was used in "reporting" — as distinguished from effecting — appellant's discharge (Statement of The Case, Part III 4).

But the consequentiality of which of the two actions was actually effected? On this the Board, unfortunately, is silent (JA 117).

5. Appellant's Removal Is Without Warrant or Sanction in Law

Labor exceeded its legal discretionary authority when it removed appellant. The removal is therefore void. If authority for this were needed, it might be found in a statement broadcast to the nation by one of the nominal defendants in the instant action: Chairman of the Civil Service Commission John W. Macy, Jr.

"Every act of Government in our free society must have its authority in the law. Every Government officer and employee must scrupulously observe the law in the dis-

charge of his official duties. A Government based on law, and a people blessed with liberty and prosperity constitute the essence of a great society. Observance of the law by her citizens has made and will keep America strong." (Mr. John W. Macy, Jr., Chairman of the Civil Service Commission, speaking in behalf of the Federal Bar Association in support of its law enforcement program. A pre-recorded statement broadcast on radio Nov. 28, 1965, on N.B.C.'s *Meet The Press*.)

Appellant is frightened. Not as a removed employee, but as an American. Chairman Macy would understand.

VI

In Removing Appellant, Labor Allowed Him Only a Small Part of the Prescribed Time for Answering Reasons for the Proposed Action. The Civil Service Commission Failed To Reach the Question.

1. Introduction

This is an alternative to Part III above of the instant Argument. Appellant in effect was allowed only three days for answering the BLMR Commissioner's proposal that he be separated. This was not:

- (1) The minimum 10 day period prescribed by Department of Labor regulations. (Regulations stipulated by Labor - JA 178)
- (2) "[A]mple opportunity to prepare answers and secure affidavits." (Civil Serv. Comm. Regs., 5 CFR 22.203)
- (3) "[R]easonable time for answering . . . and for furnishing affidavits . . ." (Sec. 14, Vet. Pref. Act)

In notifying appellant of the proposal to separate him for failure to accompany his activity to Detroit, the BLMR Commissioner had written: ". . . the Secretary [of Labor] affirmed that your post of duty was Detroit . . ." But ultimately the BLMR Commissioner grudgingly retracted the advice just quoted. From the date of said retraction, appel-

lant was allowed only 3 days (two of which were Saturday and Sunday) to answer the proposal he be separated, rather than the lengthier prescribed time.

The pertinent facts are found in the Statement of The Case, Part IV.

2. Discussion

If the Court does not agree that the removal effected against appellant differs materially from the proposed separation for failure to accompany activity, then, contrary to Part III above of the instant Argument, appellant *did* receive time for answering the reasons advanced for his proposed discharge. But from the facts just cited, it follows that appellant received only 3 days rather than the "reasonable time," "ample opportunity," and "10 day period" required by the authorities cited in Items (1), (2) and (3) of the Introduction immediately above.

In the letter of June 6, 1962, proposing his separation, appellant is notified: ". . . the Secretary affirmed that your post of duty was Detroit . . ." (Statement of The Case, Part IV, 1, and/or JA 158) Whether or not this information is characterized as a part of the reasons for appellant's proposed separation (i.e., the discharge is for failure to obey a transfer order that was affirmed by the Secretary), it would obviously have affected the entire complexion of any answer appellant might have made to the charges preferred against him. Appellant so indicated under oath. (Statement of The Case, Part IV 4, and/or JA 211, 212) Not until clarification of the "Secretary's affirmation" did appellant "have a feeling" (p. 253 of Gov't. Exhibit B, JA 212) that, in answering the charges preferred against him, he would not be contesting an order personally and explicitly affirmed by the Secretary of Labor. And since, with this clarification, appellant was given only 3 days to answer, he did not have the prescribed time to answer the charges preferred against him.

By advising appellant in its letter of June 6, 1962, of the "Secre-

tary's affirmation," the Bureau of Labor - Management Reports deliberately sought to mislead and intimidate appellant, inhibiting any answer he might have made to the charges preferred against him. Every authorized act within the Department of Labor is an act of the Secretary of Labor. Within the Department, therefore, the ascription of an act to the Secretary when the Secretary personally is not intended is sheer nonsense. This is especially true when, as in the instant case, that act is authenticated by a signed "A.J.G." and the Secretary's name is Arthur J. Goldberg. Appellant's interpretation of the letter of June 6 to mean that his transfer to Detroit had been personally affirmed by the Secretary was obviously justified.

The Bureau acknowledged this by abandoning its own original interpretation (that a routine "Standard Form 50" had been intended — Statement of The Case, Part IV 2) and by substituting an explanation in its letter of July 18, 1962, that, if taken at face value, did involve the Secretary personally (Statement of The Case, Part IV 3). But analysis of the Bureau's explanatory letter of July 18, 1962, indicates that the Secretary's alleged personal involvement was not in an affirmation that appellant's post of duty was Detroit, but only in the *preliminary* decision that ruled, in effect, first that appellant should *not* be transferred to Detroit. Said decision did authorize appellant's ultimate transfer out of Washington, D.C. (not necessarily to Detroit), *only* if a canvass of the D.C.—Maryland area failed to produce a job opening there for appellant (Statement of The Case, Part IV 4, Part I 4; and see JA 176). This presented appellant with a significantly different set of facts from those included in the letter of June 6, 1962, preferring charges against him.

In short, the Bureau's explanatory letter of July 18, 1962, does not justify the earlier assertion in its June 6, 1962, letter of charges against appellant that the Secretary had affirmed that his post of duty was Detroit. Instead of trying to justify that assertion, the Bureau should have

recognized that its July 18, 1962, "explanation" had withdrawn or significantly changed it; and rather than the 3 remaining days allowed him, appellant should thereupon have been given an entire new period from July 18, 1962, in which to answer the charges preferred against him.

Appellant's removal is unlawful because the 3 days allowed him for answering the charges preferred against him fail to meet not only the criterion prescribed by Section 14 of the Veterans' Preference Act, but also those prescribed by Civil Service Commission and Department of Labor regulations.

VII

Appellant's Transfer From Washington, D.C., to Detroit Was Unauthorized, Unlawful, and Fraudulent; Hence Appellant's Failure To Honor Said Transfer Is Not Such Cause for His Removal "... as Will Promote the Efficiency of the Service ..." (Sec. 14 of the Veterans' Preference Act)

1. Introduction

Rather than being such cause for his removal "... as will promote the efficiency of the service ...," appellant's refusal to accept his transfer was a refusal to become a party to a fraud, and an act *itself* calculated to promote the efficiency of the service.

In accord with Labor's rules, appellant had appealed to the Secretary of Labor from the lower-level intra-Labor-grievance decision that he be transferred to Detroit. The Secretary's ensuing grievance-decision (that appellant be transferred *only* if no opening could be found for him in Washington, D. C.), was cited by Labor as the authority for appellant's subsequent transfer to Detroit. But at his Civil Service Commission hearing, appellant alleged (with documentary evidence) that his transfer to Detroit had been unauthorized, unlawful and fraudulent. The reasons: the transfer's cited authority (the Secretary's

grievance-decision) is a forgery, and appellant's appeal-brief to the Secretary (submitted in accord with Labor's rules) had been suppressed and withheld from the Secretary.

In the course of appellant's Civil Service Commission appeal, evidence introduced by Labor, at the Civil Service Commission's request to authenticate the Secretary's grievance-decision, proved to be a transparent sham; moreover it was labelled by appellant as inadmissible. The Commission's ultimate decision fails to acknowledge that the Secretary of Labor's grievance-decision is the cited authority for appellant's transfer to Detroit, fails to rule on either the authenticity of the Secretary's decision (Is it a forgery?) or the admissibility of Labor's "authenticating" evidence, fails to rule on whether appellant's appeal-brief had been withheld from the Secretary. On all these questions, the record sustains appellant — which, no doubt, is the reason the Civil Service Commission is silent.

2. Labor Cites Its Authority for Transferring Appellant to Detroit: The Secretary of Labor's Grievance-decision ("A.J.G.")

See the Statement of The Case, Part I 5.

3. Appellant Alleges to the Civil Service Commission That the Secretary's Grievance-decision is a Forgery.

See the Statement of The Case, Part II 1.

4. The Civil Service Commission's Appeals-Examiner Implicitly Agrees With Appellant.

See the Statement of The Case, Part II 2, 3.

5. Labor Agrees With Appellant: If Labor's Cited Authority for Appellant's Transfer ("A.J.G.") Was Not Authentic, Appellant's Transfer Was Invalid. Labor Ostensibly Authenticates "A.J.G."

See the Statement of The Case, Part II 3.

6. Appellant Alleges to the Civil Service Commission
That Labor's Evidence "Authenticating" the Secretary's
Grievance-decision ("A.J.G.") is Inadmissible.

The pertinent facts are in The Statement of The Case, Part II 3, 4.

In Civil Service Commission hearings such as that afforded appellant, "Statements of witnesses shall be by affidavit, when practicable . . ." (5 CFR 22.401) Labor's representative at the Civil Service Commission hearing (Mr. Finnegan) did not submit an affidavit (he was already under oath); Labor's Director of Personnel McVeigh did not submit an affidavit; Mr. Shulman did not submit an affidavit; Mr. North did not submit an affidavit.

Instead, Labor's Director of Personnel McVeigh submitted a photo of a September 12, 1962, memorandum addressed to Labor's Mr. North by the Secretary of Labor, identifying Mr. Shulman as the authorized signer of "A.J.G." (JA 64) The memorandum of September 12, 1962, fortuitously gave the Civil Service Commission Appeals-examiner precisely — no more, no less — what, on September 12, 1962, he had asked of Labor's representative (Mr. Finnegan).

Appellant requested the original of the fortuitously written memorandum addressed by the Secretary to Mr. North. The request was ignored. The Secretary's signature on the original: Is it written? Or is it stamped? as the photocopy in the record indicates it might be (JA 64). The record does not say.

Appellant was advised that Director of Personnel McVeigh's office, rather than the addressee Mr. North, had the original. Had Mr. North actually received the original from The Secretary? Mr. North wouldn't say (JA 72-85).

7. The Civil Service Commission Fails to Acknowledge That the Secretary of Labor's Grievance-decision Is the Authority for Appellant's Transfer, and Fails to Rule on Appellant's Contention That the Evidence Submitted By Labor to Authenticate It (Item 6 Immediately Above) Is Inadmissible.
-

See The Statement of The Case, Part II 5.

8. Admissible Or Not, the Memorandum From Secretary of Labor Goldberg to David S. North Dated September 12, 1962, Ostensibly Authenticating the Secretary's Grievance-decision, Is Factually False. The Memorandum Is a Fraud. The Grievance Decision Is Therefore Not Authenticated.
-
9. Appellant's Grievance Appeal-Brief Was Suppressed; It Was Withheld From the Secretary by Labor's Personnel Officials. Those Same Officials, and Not the Secretary, Authored the Secretary's Memorandum of September 12, 1962, Addressed to Mr. North and Submitted to the Civil Service Commission.
-

A *prima-facie* case has already been made for the foregoing caption No. 8. Although not as readily discernible, caption No. 9 is also supported by the record. But for either caption, space and time limitations preclude extensive citation of the record and analysis of proof here.

However, should appellees in their Answer, either by implication or explication, contend that appellant's transfer to Detroit was authorized and valid, appellant shall consider that the instant Items No. 8 and 9 have been controverted. Appellant will then, in his Reply, *prove* the validity of the foregoing captions No. 8 and 9 and the invalidity of his transfer to Detroit.

VIII

In Adjudicating Appellant's Appeal of His Removal, the Civil Service Commission Failed to Honestly and in Good Faith Consider Certain Specific Evidence Which, After Its Submission by Appellant, Became "Missing." The Commission's Required Approval of Appellant's Removal Is Therefore Invalid. (Sec. 14, Veterans' Preference Act.)

In the Civil Service Commission's consideration of appellant's appeal, certain of his evidence submitted to the Commission was either not considered at all because it had become "missing," or it was "considered" by the Commission only in bad faith. Appellant was thus denied the following benefit of the law: The Civil Service Commission shall dispose of appellant's appeal only "after investigation and consideration of the evidence submitted . . ." (Sec. 14, Veterans' Preference Act)

Appellant's "missing" evidence was his intra-Labor-grievance appeal-brief. He had submitted the brief first in the Department of Labor, where it was then suppressed (Part VII 9 of the instant Argument). He submitted it again to the Civil Service Commission. When the Commission certified the administrative record for submission to the District Court, this same evidence was certified to be "missing." (JA 30, Item 41)

All allegations of fact in the instant Part VIII are supported by the record. But space limitation precludes extensive citation of the record and analysis of proof here. If the Government should contend, however, either by implication or explication, that *all* of the evidence submitted by appellant to the Civil Service Commission received the Commission's good-faith consideration, and if it is otherwise necessary or desirable, in his Reply appellant will *prove* the validity of the instant Part VIII.

IX

The Appeals Examining Office Decision of December 11, 1962, and the Board of Appeals and Review Decision of June 4, 1963 — the Civil Service Commission "Findings and Recommendations" Sustaining Appellant's Removal — Are Demonstrably Fraudulent. Appellant's Removal Is Therefore Unlawful. (Sec. 14, Veterans' Preference Act.)

The foregoing caption IX is supported by the record. But Parts I through VIII of the instant Argument all state defects in appellant's removal that invalidate said removal — regardless of whether those defects result from error or fraud. Since proving fraud is therefore not essential to appellant's case, and since space limitation precludes it here, the instant Part IX is not supported by citations to the record.

But should appellees' Answer make the Civil Service Commission's alleged lack of good faith pertinent, appellant in his Reply will support with citations to the record, and prove to the extent time and space permit, the Civil Service Commission's demonstrable fraud. Given enough time and space, appellant will prove it to the degree necessary for criminal conviction — beyond any reasonable doubt.

Although the instant Part IX does not appear essential to appellant's case, it states one of his strongest motivations for risking health, career, and lifetime savings in pursuing this action. The late Judge Clark of this Circuit Court of Appeals said:

"In my judgment, the defiance of the law and disregard of the will of Congress on the part of administrative bureaucrats is a greater menace to our institutions than the threat of the atomic bomb." *Reynolds v. Lovett*, 91 App. D.C. 276, 277, 201 F2d 181, 182 (1952).

B.

THERE IS A GENUINE ISSUE AS TO A
MATERIAL FACT

X

Since the Government's Objections to the Employee's Interrogatories and/or Its Motion for a Protective Order Were Untimely and Unseasonable, and Since the Government Failed To Show Good Cause for a Protective Order, the Lower Court Erred in Granting Government's Motion for a Protective Order.

The employee's interrogatories stipulated that answers be served within 15 days after date of service of the interrogatories (JA 23). All other relevant facts about the time-table involved are found at Statement of the Case, Part V.

Viewed either as objections to interrogatories or as a motion for a protective order, the Government document filed and served on April 8, 1965 (JA 24), 15 days after employee's interrogatories had been personally served, was untimely and unseasonable. Objections to interrogatories made more than 10 days after they are served are too late; objections not asserted within 10 days are waived (Rule 33, FRCP). Applications for protective order must be made "seasonably," i.e., within the time prescribed for asserting objections, and *before* the date designated in the interrogatories for serving answers (Rule 30(b), 33, FRCP). By both criteria, the Government objections and/or request for protective order were too late.

Moreover, the Government failed to show good cause for a protective order (JA 24, 123-130). The employee's allegations of fraud were particularized. See the specific sentence of the Civil Service Commission decision that is designated fraudulent (Compl. Par. 35, JA 15), and see the collaboration of appellant and defense counsel to demonstrate the fraudulence of that sentence (JA 225 (bottom) to 227).

One of the functions of interrogatories is to determine whether there is an issue as to any material fact. By demonstrating the Civil Service Commission's willingness, or lack thereof, to answer the interrogatories — thus identifying the individuals responsible for the decisions appellant alleged were fraudulent (JA 15) — appellant's interrogatories had been designed to determine whether the alleged bad faith of the Civil Service Commission was at issue. It was error for the lower Court to deny appellant the opportunity to so determine.

XI

Since the Civil Service Commission's Good Faith in Adjudicating Appellant's Appeal to It Was at Issue, Granting the Government's Motion for Summary Judgment Was Error.

The foregoing Parts I through IX of the instant Argument are submitted in support of a summary judgment for appellant. Alternatively, if it is held that appellant is not entitled to summary judgment, then it is respectfully submitted that neither is the Government, since there is a genuine issue as to a material fact — the good faith of the Civil Service Commission. See the penultimate paragraph of the preceding Part X.

CONCLUSION

A. The judgment below should be reversed, with directions:

1. To grant summary judgment to plaintiff-appellant;
2. To issue mandatory injunction, directed to the Secretary of Labor:

(a) To restore plaintiff-appellant to the position in Washington, D.C., from which he was unlawfully removed;

(b) To reimburse plaintiff-appellant with back pay from May 7, 1962, the date he was suspended for more than 30 days without benefit of the provisions of Section 14 of the Veterans' Preference Act (Statement of The Case, Part I 6);

(c) To reimburse plaintiff-appellant with back pay from August 3, 1962, the date he was unlawfully removed from his employment (Statement of The Case, Part I 6).

B. Alternatively, the judgment below should be voided, with directions to permit appellant to reassert the interrogatories served on the Government and filed on March 24, 1965.

Respectfully submitted,

Wilfred Handler
P. O. Box 1052
Baltimore, Maryland 21203

Appellant, pro se

App. 1

APPENDIX "A"

Veterans' Preference Act of 1944 Secs. 14 and 19,
58 Stat. 390, 391, 5 U.S.C. 863, 868

Sec. 14. No . . . preference eligible . . . shall be discharged, suspended for more than thirty days, furloughed without pay, reduced in rank or compensation, or debarred for future appointment except for such cause as will promote the efficiency of the service and for reasons given in writing, and the person whose discharge, suspension for more than thirty days, furlough without pay, or reduction in rank or compensation is sought shall have at least thirty days' advance notice . . . stating any and all reasons, specifically and in detail, for such proposed action; such preference eligible shall be allowed a reasonable time for answering the same personally and in writing, and for furnishing affidavits in support of such answer, and shall have the right to appeal to the Civil Service Commission from an adverse decision of the administrative officer so acting, such appeal to be made in writing . . . *Provided*, That such preference eligible shall have the right to make a personal appearance . . .; after investigation and consideration of the evidence submitted, the Civil Service Commission shall submit its findings and recommendations to the proper administrative officer and shall send copies of same to the appellant or to his designated representative, and it shall be mandatory for such administrative officer to take such corrective action as the Commission finally recommends . . .

* * *

Sec. 19. It shall be the authority and duty of the Civil Service Commission . . . to make and enforce appropriate rules and regulations to carry into full effect the provisions, intent, and purpose of this act . . .

App. 2

APPENDIX "B"

Code of Federal Regulations
(1949 Edition, as of January 1, 1961)

Title 5, Part 22 — Appeals of Preference Eligibles Under the
Veterans' Preference Act of 1944

* * *

Sec. 22.203 Employee's answer. (a) A reasonable time shall be allowed an employee for answering personally and in writing, charges and notifications of proposed adverse actions and for furnishing affidavits in support of such answers. The reasonable time required shall depend on the facts and circumstances of each case, and shall be sufficient in all cases to afford the employee ample opportunity to prepare answers and secure affidavits.

* * *

SUBPART D — COMMISSION ACTION ON INITIAL APPEAL

Sec. 22.401 Investigation.

* * *

(b) Evidence. Statements of witnesses shall be by affidavit, when practicable, and relative to the adverse decision.

APPENDIX "C"

Federal Rules of Civil Procedure

Rule 30(b)

Orders for the Protection of Parties . . . After notice is served for taking a deposition by oral examination, upon motion seasonably made . . . and for good cause shown, the court . . . may make an order that the deposition shall not be taken . . . or the court may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression.

App. 3

Rule 33

Interrogatories To Parties . . . Within 10 days after service . . . a party may serve written objections thereto . . . The provisions of Rule 30(b) are applicable for the protection of the party from whom answers to interrogatories are sought under this rule.

APPENDIX "D"

Reproduced on the following pages are photocopies of all Federal Personnel Manual pages cited in the instant Brief.

In each instance when the instant Brief cites the F.P.M., the pertinent material is there quoted. Of the F.P.M. pages cited in the instant Brief, photocopies of all but two (R-1-14; R-1-14.01) were filed by plaintiff-appellant in the District Court (plaintiff's Appendix 1, in support of opposition to defendants' motion for summary judgment, filed in the District Court on November 15, 1965).

Submission of Notifications of Personnel Actions to the Central Office of the Commission

In addition to the requirements stated above for preparation of notifications of personnel actions, the Commission requires that certain notifications be submitted to its central office. These notifications are used to form the basis for apportionment statistics, for certain investigative purposes, and for a national locator file of Federal employees. The types of actions for which Standard Forms 50 must be submitted to the Commission are listed in the table below. [NOTE: The Commission's copy of Standard Form 50 for actions not listed below should not be sent to the Commission.]

Time of submission.—All required notifications of personnel action as covered by the

table must be submitted to the Civil Service Commission once a month on a current basis, *except* that notifications of the following actions must be submitted as soon as the action takes place:

- (1) Removals;
- (2) Resignations while charges are pending or to avoid preferment of charges;
- (3) Separations for disability or disqualifications;
- (4) Any other separation when the circumstances reflect on the employee's suitability for reemployment; and
- (5) Suspensions effected under authority of Public Law 733, 81st Congress (Executive Order 10450).

Procedure.—Submit notifications on a copy of Standard Form 50 (the second carbon or

TYPES OF NOTIFICATIONS OF PERSONNEL ACTIONS WHICH MUST BE SUBMITTED TO THE COMMISSION

1. APPOINTMENT ACTIONS	2. CHANGE ACTIONS	3. SEPARATION ACTIONS
<p>a. All appointments of hearing examiners.</p> <p>b. All other appointments, except:</p> <ul style="list-style-type: none"> -Appointments which are limited to 6 months or less. -Appointments of aliens outside the continental United States which are limited to periods of from 6 months to 1 year, and are not subject to the instructions in Chapter I-2, "Investigations." 	<p>a. All changes involving hearing examiners.</p> <p>b. All promotions, changes to lower grade, reassignments and mass changes, which involve:</p> <ul style="list-style-type: none"> -A change in the employee's appointing office; or -A change of a nonveteran from a nonapportioned to an apportioned position, or vice versa. (The SF 50 in such cases will show whether the position involved is apportioned.) <p>c. All conversions to career or career-conditional appointments, <i>except</i> conversions from career-conditional to career upon completion of the service requirement or upon completion of probation.</p> <p>d. All conversions to reinstatement.</p> <p>e. All changes of name, except for employees serving under appointments which are not required to be submitted to the Commission. (See Item 1b in the first column of this table.)</p> <p>f. Extensions of ☆limited☆ appointments for periods in excess of 6 months beyond the date of original appointments.</p> <p>g. All conversions of appointments with definite time limitations to appointments without definite time limitations.</p>	<p>a. All separations for cause.</p> <p>b. All other separations, except when the separation is from employment which was not required to be submitted to the Commission (See Item 1b in the first column of this table.)</p>

Instructions for filling out Standard Form 50A, "Notice of Short Term Employment" are given on the reverse of the last copy of the snap-out set of the form. ★

When internal administrative purposes require further amplification or greater detail of a personnel action reported in accordance with instructions in Tables 1 and 2, such supplementary information is recorded under "Remarks" on the Standard Form 50.

If the agency uses a Standard Form 50 to notify an employee, or to make an internal record, of a personnel matter which does not involve a change for which the Commission prescribes a term, it should not use terminology which the Commission prescribes for another type of action. (See Part II, Table 2.)

Inquiries concerning this subject should be referred in the metropolitan area of Washington, D.C., to the ★Bureau of Inspections, except those pertaining to retirement, which should be referred to the Bureau of Retirement and Insurance. ★ Inquiries in the field should be referred to the appropriate regional or branch office of the Commission.

Position titles used on notifications of personnel actions.—*Positions covered by published standards.*—Position-classification standards published by the Commission under the Classification Act of 1949, as amended, contain the official class titles for individual positions in the classes covered. Agencies shall designate individual positions by such official class titles in position description forms and in notifications of personnel actions or other reports or communications to the Civil Service Commission.

In some few instances, agencies may have occasion to use organizational or other operating titles because of the requirements of some special statute or internal operating needs. There is no objection to this practice, provided that the Commission's titles are used (alone or in addition to the other title) in documents sent to the Commission.

If functional or organizational titles are used on Standard Form 50, "Notification of Personnel Action," such titles should be placed in parentheses below the official class title to

identify them as functional or organizational. If functional or organizational titles are used on Optional Form 8, "Position Description," such titles should be indicated only in the specific place provided therefor, i. e., item 9.

Positions not covered by published position-classification standards.—Agencies are urged to use titles which are descriptive of the duties performed and the responsibilities assumed rather than lengthy or high-sounding titles.

Submission of Notifications of Personnel Actions to the Central Office of the Commission

In addition to the requirements stated above for preparation of notifications of personnel actions, the Commission requires ★that copies of:

- a. All Standard Forms 50 and 50A (and exceptions thereto); and
- b. Standard Forms 1126 (or substitutes therefor) effecting new salary rates and changes from full-time to non-full-time, or vice versa, for employees whose social security numbers end in 5 (see p. R-1-34.08),

shall be submitted to its central office. These notifications are used to form the basis for apportionment statistics, for certain investigative purposes, for a national locator file of Federal civilian employees, and to provide statistical data about Federal civilian employment. ★

Time of submission.—The Commission's copies of Standard Forms 50 and 50A, and copies of Standard Forms 1126 (or substitutes therefor) may be accumulated for mailing; however, they must be mailed to the Commission no less frequently than the last work day of each week.

Procedure.—Do not use an edition of Standard Form 50 prior to the December 1961 edition. Show all information required by Tables 1 and 2 of this chapter.

Submit notifications of personnel actions, and Standard Forms 1126 (or substitutes therefor), by letter of transmittal (CSC Form 701) addressed to the U.S. Civil Service Commission,

Part IIC. Change (Other Than Position Changes and Conversions)—Continued

Standard Terms and Abbreviations	Explanation and Coverage
Longevity Step Increase Longev Step Inc	Increase in rate of compensation as a reward for long and faithful service (sec. 703 of the Classification Act of 1949, as amended).
Administrative Pay Increase Adm Pay Inc	Increase in rate of compensation, granted administratively. (Does not include periodic or longevity step increases.)
Administrative Pay Decrease Adm Pay Dec	Decrease in rate of compensation because of administrative requirements exclusive of "pay adjustment."
Pay Adjustment Pay Ad	Adjustment in rate of compensation because of: <ul style="list-style-type: none"> -Legislation, establishment of new minimum pay rate for a specific class of position, or wage board action; or -Change in classification of position from subject to the Classification Act of 1949, as amended, to ungraded, or vice versa; or -Change of salary basis from per annum to per diem, full-time to part-time, etc., or vice versa; or -Salary differential allowed for service outside the United States. On pay adjustments from full-time to part-time or vice versa, or from when actually employed to full time or vice versa, from WAE to part-time, or vice versa, add "to part-time," "to WAE," or to "full-time," as applicable, as a part of the term. [Whether such a change is a reduction in rank or compensation within the purview of the Veterans' Preference Act of 1944 is decided on the basis of the facts and circumstances of the cases.]

PART III. SEPARATIONS

(Personnel actions which result in the loss of employees from the agency.)

NOTE.—Whether or not the separation is subject to removal procedures required under Parts 9 and 22 of the Commission's regulations is determined by the facts and circumstances in the case. Consult Chapter S1 as to removal coverage of employees under those regulations. [For procedures for effecting separations because of reduction in force, see Part 20 of the Commission's regulations.]

Standard Terms and Abbreviations	Explanation and Coverage
Death	Separation by death of employee.
Reduction in Force RIF	Separation required by reduction in force. This term is also used on expiration of reduction in force furlough or failure of employee to return from such furlough if called.
Removal Rem	Separation initiated by the appointing officer on charges of misconduct, delinquency, unsatisfactory performance of duties, or cause not covered by one of the reporting terms listed in this part.
Resignation Resig	Separation at employee's request, whether or not supported by a formal resignation.
Retirement Ret	Separation because of retirement: (1) When the employee has a combination of age and service at which mandatory separation is required by law (see "Age Retirement," Chapter R-5); or (2) After the Civil Service Commission determines that an employee eligible for disability retirement is disabled for useful and efficient service and transmits Form RET 46-48 to the agency (see "Disability Retirement," Chapter R-5); or (3) After the employee applies for retirement on the basis of a combination of age and service at which optional retirement is permitted by law under the conditions stated under "Optional Retirement," Chapter R-5. If the retirement is in lieu of involuntary separation within the definition set forth on page R-5-44, add proper notation, such as "RIF," "Failure to accompany activity to (city and State)," "Position abolished," etc., as applicable. [Not used in separating an employee who becomes eligible for retirement solely because of an involuntary separation, see "Discontinued—Service Retirement," Chapter R-5. In such cases, "Reduction in Force," "Resignation—RIF," etc., as applicable, is reported on Standard Form 50.]

(Continued next page)

PART III. SEPARATIONS—Continued

Standard Terms and Abbreviations	Explanation and Coverage
Separation-Abandonment of Position S-Aban of Pos	Separation, other than resignation, by the employee's action in abandoning his position by: (1) Quitting his post of duty; (2) Failing to return to duty at the expiration of an authorized period of leave, or (3) Failing to return from furlough (other than furlough for reduction in force) when called. [Do not use this term if regular removal procedures are followed.]
Separation-Disability S-Disab	Separation of an employee whose mental or physical condition renders him incapable of performing the duties of his position and who is ineligible for disability retirement, or who, after being advised by the agency that he is eligible to apply for disability retirement, refuses to do so. (Includes separation because of legal incompetence.)
Separation-Disqualification S-Disqual	Separation: (1) Based on instructions from the Civil Service Commission under CS Rule V; or (2) Because of unsatisfactory performance or conduct during probation or trial period (see CS Reg. 9.103 (a)); or (3) Initiated by agencies because of conditions arising in whole or in part before employee's entrance on duty. (Includes separation for intentional false statement in application and appointment papers, failure to qualify in investigation, etc.) If separated during probation or trial period, see CS Reg. 9.103 (b); or if separated after completing probation or trial period, see CS Reg. 9.102 (a) (1) or Part 22 of Regulations, as applicable. [A separation for disqualification requires specific reasons for separation (See R-1-32).]
Separation-Military (1) S-MIL (2) S-MIL No Ret From Furl	Separation by administrative action of agency: (1) Upon employee's entering U. S. military service, or other similar organization designated by law or regulation; or (2) Following military furlough when for reasons other than death employee is not restored to duty under the laws or regulations granting him reemployment rights.
Separation—To Accept (type) Appointment in (agency) S To Accept (type) Appt in (agency)	Separation (other than by resignation) of an employee who has accepted an appointment (other than appointment by transfer) in another agency, without a break in service of a workday.
Separation-Transfer S Trans	Separation from an agency to allow "Transfer," without a break in service of one work day, to another agency ★ or transfer to a Public International Organization under Public Law 85-795. ★
Separation (1) S Fail to Accom Activity to (city and State) (2) S Fail to Accept New Assign	Separation initiated by an appointing officer when an employee fails because of family or other personal reasons to: (1) Accompany his position when it is moved to a new organizational or geographical location because of a transfer of function or activity. [Add "Failure to accompany activity to (city and State)" after the term.] (2) Accept a new assignment (from a competitive position to another competitive position or from an excepted position to another excepted position) which is occasioned by an established rotation policy within an agency, or which is directed by the agency in the best interests of the Government. [Add "Failure to accept new assignment" after the term.]

(Continued next page)

c. "Reemployment rights in (agency) under authority)."

[Also, see Item 3d under General Instructions above.]

Cause: Separation actions initiated by the appointing officer for cause not covered by one of the other methods of separation listed in this table.

Show, as appropriate:

"340 Removal"

"345 Removal--Inefficiency" if based on unsatisfactory performance of duties.

"320 Separation--Disability" (See coverage of this term on page R-1-14.01).

Cite the applicable law or rule, if any, such as:

--"Sec 9(a), Hatch Act"

--"PL 733, 8-26-50"

--"PL 330, 84th Cong., 8-9-55."

[Do not cite Parts 9 or 22 of the Commission's regulations as authority for the separation.]

Give sufficient details of the specific facts that caused the removal or separation to enable the Commission to determine the employee's reemployment eligibility and retirement rights. And to enable a State agency to determine his entitlement to unemployment compensation (see Item 4 under General Instructions above). However, reasons for the separation must be consistent with the reasons stated in the decision or a proposed adverse action.¹

[A general statement, such as "Letter of charges dated 1-5 61," "Misconduct," "Excessive absenteeism," "Insubordination," is not in sufficient detail.] Describe briefly the nature and extent of the employee's actions that caused the separation. For example: "Employee was arrested and booked on charges of disturbing the peace and destruction of property; jailed overnight; his name and the charges against him were reported by a newspaper;" "unexcused tardiness on 11 occasions within 30 day period," "Reported to work intoxicated 5 times during June 1961," "Employee applied for and received 19 days' sick leave; records of a private company showed that it employed him on each of the 19 days."

¹ The Standard Form 50 is in addition to, and should not be substituted for any required notice of decision on a proposed adverse action.

² As explained in Chapter S-1 under "Separation--Disability," it is not always practicable or medically advisable to include information about the employee's physical or mental condition in the notice of adverse action; in these instances, medical information would not be entered on the SF 50 covering the separation. In such case, there must be stapled to the Commission's copy of the SF 50 covering separation, a letter to the Commission giving the medical information in sufficient detail to show whether check with the agency is needed to determine the person's eligibility for reemployment. The letter must include the employee's date of birth, and a copy of such letter must be placed in the employee's Official Personnel Folder.

Section 1. General Provisions

ORGANIZATION AND CONTENT OF CHAPTER

The material presented in this chapter covers personnel actions which separate, suspend, or furlough employees, or reduce their rank or compensation.

Excluded from the chapter are all such actions which are taken for reduction-in-force purposes (see Chapter R-3 and Part 20 of the Commission's regulations), which affect Hearing Examiners (see Part 34 of the Commission's regulations), or which are taken for security reasons. Under Public Law 733, Executive Order 10450, and similar authorities, the agencies are not subject to the regulatory procedures of the Civil Service Commission in taking action in the interest of national security against the incumbents of sensitive positions. In addition, the security authorities give the incumbent of a sensitive position no right of appeal to the Civil Service Commission from an action taken in the interest of national security.

The actions discussed in this chapter are not confined to any particular part of the Federal service. They occur in all agencies, and they affect all types of employees. The discussion may, therefore, be helpful in places and situations in which the Commission's regulations have no mandatory application. In taking action, against an employee to whom the Commission's regulations do not apply, the agency may, in its administrative discretion, elect to follow the principles and procedures which in other cases are mandatory.

This chapter is not limited to a discussion of "how to do it." With respect to the actions covered, the following material is concerned with three primary matters. One is an explanation of the circumstances in which each of the actions becomes appropriate. The second relates to the timing which goes to make

one type of action more appropriate than another. The third emphasizes the procedures. All three are at least optionally applicable in any case, but the third, the procedures, must be followed when the agency initiates adverse action against an employee who is covered by Part 9 or Part 22 of the Commission's regulations.

Not all of the actions which separate, suspend, or furlough employees, or reduce their rank or compensation reflect adverse decisions of officials acting for their agencies. In order to emphasize the distinction, the organization of the following material groups the actions according to source. One class of action is taken at the request of the employee, or is otherwise employee-initiated. These are covered in Section 2. Other actions, initiated by neither the employee nor the agency, but required by circumstances or directed by the Civil Service Commission, are covered in Section 3. The adverse actions—actions which are decided upon by the agency as being justified by the circumstances and which are calculated to promote the efficiency of the service by separating, suspending, or furloughing employees, or reducing their rank or compensation—are covered in Section 4.

Section 5 gives the specific procedural requirements of Parts 9 and 22 of the Commission's regulations. These state the manner in which the agency must proceed in taking actions which are adverse to employees who are covered by Parts 9 and 22.

The appendices of Section 5 contain notices of proposed adverse actions and notices of adverse decision. These are not offered as examples of acceptable language, arrangement, or format. They should not be copied or paraphrased in the preparation of actual notices. They are intended only to serve as illustrations of the procedural requirements and suggestions which are described in Section 5.

RESPONSIBILITIES OF AGENCIES

★The authority of the agency to separate, suspend, or furlough an employee, or to reduce his rank or compensation, is incidental to its authority to appoint. The agency is responsible for taking such actions promptly whenever their accomplishment will promote the efficiency of the service. Section 01.3(d) of Executive Order 9830 places a positive responsibility on the head of each agency "to remove, demote or reassign to another position any employee in the competitive service whose conduct or capacity is such that his removal, demotion, or reassignment will promote the efficiency of the service." Thus, the agency is both empowered and obligated to act when it determines that action is in order.

Although the basic authority and responsibility are placed by law and Executive Order in the head of the agency, they are generally delegated down the line to specific operating officials and supervisors. Strict adherence to any applicable procedure, whether required by the Commission's or the agency's regulations is an essential phase of the agency's responsibility.

The agency is responsible for assuring that any adverse action is based on good cause, is consistent with other such actions taken by the agency, and is fair and equitable in the light of all the circumstances affecting the case.

One principle that agencies should follow when taking disciplinary action is that of imposing "like penalties for like offenses." Agencies should be as consistent as possible when deciding on disciplinary actions. Adherence to this principle will help to insure "equitable and uniform treatment to employees against whom adverse action is proposed," as contemplated by Section 01.2(d) of Executive Order 9830.

Nevertheless, "surface" consistency should be avoided. Agencies should give consideration to all factors involved when deciding what penalty is appropriate, including not only the gravity of the offense but such other matters as the existence of mitigating circumstances, the frequency of the offense, and whether the action accords with justice in the particular situation.★

Additional agency responsibilities include the determining of the employee's eligibility for any position change resulting from a reduction in rank or compensation (see Chapter X-1), and the recording and reporting of any action taken (see Chapter R-1).

At the time of separation from the service, an employee who has been covered by the Civil Service Retirement Act should be informed of his right to refund or annuity. His Individual Retirement Record (SF 2806) is to be disposed of as provided in Chapter R-5.

If the employee being separated is covered by group insurance, he must be informed of the effect the separation will have on his group insurance (see Chapter I-3). The agency is responsible also for giving the employee any required information about unemployment compensation benefits (see Chapter C-3, and for compliance with the requirements for lump-sum payment for annual leave (see Chapter L-1).

RESPONSIBILITIES OF THE CIVIL SERVICE COMMISSION

With respect to personnel actions which separate, suspend, or furlough employees, or reduce their rank or compensation, the Commission has the following responsibilities:

- a. to issue regulations under the Veterans' Preference Act of 1944, as amended, for both the competitive and the excepted service;
- b. to issue regulations under the Civil Service Retirement Act, for both the competitive and the excepted service;
- c. to issue regulations under Executive Order 9830 for the competitive service;
- d. to issue regulations under Section 07.2 of Civil Service Rule VII on the recording and reporting of actions; and
- e. to enforce the regulatory requirements.

CANCELLATION OR CORRECTION OF ACTIONS

In general, but with the exceptions noted below, when an authorized separation has be-

REMOVAL

Removal is the action taken to separate an employee for misconduct, delinquency, unsatisfactory performance of duties, or other reasons personal to the employee which warrant separation and which are not specifically and completely covered by one of the other types of action. To the extent that these conditions are met, the action is applicable to all classes of employees (temporary, indefinite, and permanent) in both the competitive and the excepted service.

The Performance Rating Act of 1950 provides that an unsatisfactory rating shall serve as the basis for removal from the position in which such unsatisfactory performance was rendered. However, since this can be done without taking an adverse action, a removal or any other action which is subject to ~~Part 9~~ Part 22 procedures may not be based solely on the fact that the employee has received an unsatisfactory performance rating. Instead, the advance notice and the final decision to take adverse action in such a case must be based on specifically-described deficiencies and reasons which warrant the conclusion that the *particular* adverse action was for such cause as will promote the efficiency of the service. In effect, the adverse action must be processed without reliance on the employee's receipt of an unsatisfactory performance rating.

NOTE

The provisions of the preceding paragraph reflect the Court of Claims' decision in *Chisholm v. United States*, No. 391-56, decided February 3, 1960.

An employee may also be removed for inefficiency in spite of a current official performance rating of satisfactory or better. Although the Commission's regulations do not require it, before the notice of proposed removal is issued in this type of case, the agency may wish to give the employee a warning of his shortcomings and of the consequences of failure to improve. The actual notice of proposed removal should state the performance requirements of his position and how he failed to meet them. When these factors are fully recited in the notice of proposed removal, the action may be carried out even though the employee has a

current official performance rating of satisfactory or better.

Any removal action demands the exercise of responsible judgment so that an employee will not be penalized out of proportion to the character of the offense. This is particularly true in the case of a career employee with a previous record of completely satisfactory service.

In order that undesirable reemployment may be prevented, it is important that the special report of removal actions prescribed in Chapter R-1 be submitted on a timely basis.

Removal action is effected at the end of any required period of advance notice (see Section 5).

SEPARATION—DISABILITY

This action is used to separate an employee who is physically or mentally incapacitated for continued service in his position, if he does not meet the service requirements for disability retirement, or if neither the agency nor the employee wishes to apply for disability retirement (see Chapter R-5). Separation—Disability should be postponed in any case until the possibilities of disability retirement have been exhausted. The agency bears a particular responsibility to distinguish between removal for inefficiency and Separation—Disability, in view of the effect which the type of separation may have upon the employee.

When an employee appears to be mentally or physically incapacitated, he should be referred for an examination to a Federal Medical Officer, if one is available, with a statement of the particular demands of his position and a statement of how his performance or behavior fails to meet these demands. Even when the agency obtains a medical opinion of incapacity, the required advance notice of proposed Separation—Disability should not rely upon the employee's condition as the reason for action. Instead, the notice should describe the deficiencies in performance or conduct which warrant separation. When practicable, the advance notice may include a summary of the medical opinion. However, when the medical officer believes that the information might be harmful to the employee if it were

S-1-16 CHAPTER S-1. SEPARATION, SUSPENSION, FURLOUGH, AND REDUCTION IN RANK OR SALARY

released to him, the advance notice of proposed separation should not mention the medical record, but should be based solely upon those demonstrated deficiencies in performance or conduct which warrant separation.

★In separations because of disability, the agency is not relieved from reporting to the Commission on the employee's mental or physical condition. Where medical information is not included in the notice of adverse action and therefore is not shown on Standard Form 50, the agency must report to the Commission on the employee's mental or physical condition. The report should be forwarded with the Commission's copy of the notification of personnel action covering the separation (see instructions in footnote 1a, page R-1-34.19).★

If the employee refuses to submit to an examination, or it is otherwise not practicable to obtain a medical opinion, action may nevertheless be taken on the basis of deficiencies in performance or conduct.

SEPARATION—DISQUALIFICATION

Separation—Disqualification may apply either to a probationer or to one who has completed probation. The considerations applying to probationers apply equally to persons serving in trial periods. In addition, this term covers separations directed by the Civil Service Commission and other separations based upon a determination that an employee failed to meet the legal requirements applying to his employment.

One basis for the Separation—Disqualification of a career or career-conditional employee during his probationary period is that a person selected for appointment through competitive examination is only presumed to possess the skills and character traits necessary for satisfactory performance as a career employee. The presumption that he is qualified and fit must be verified through demonstrated capacity during the probationary period. If the employee fails to demonstrate these characteristics after full and fair trial, his separation by this action is proper. The action may be based upon deficiency in duty performance, lack of aptitude or cooperativeness, or upon undesir-

5-1-16
able suitability characteristics evidenced by his activities either during or outside official working hours. When the action is based entirely on deficiencies in performance or conduct after entrance on duty, the probationer is entitled to a written notice of the reasons for his separation, and the effective date, but the Commission's regulations do not require that he be given an opportunity to reply. The specific requirements are stated in Appendix B of Section 5.

The Commission's regulations require a different procedure when the action is based to any extent on suitability prior to appointment. Pre-appointment considerations include the intentional falsification of application forms or other pre-appointment documents. In such a case, the probationer is entitled to notice in advance, a specific and detailed statement of the reasons, the right to reply, consideration of his reply, a decision, and information on his right to ask the Commission to review the procedure by which he was separated (see Appendix B of Section 5).

SEPARATION—FAILURE TO ACCEPT
NEW ASSIGNMENT

This action is appropriate for use when an agency has found it necessary to assign an employee to a position in a different geographical or organizational location, and the employee refuses to accept the new assignment. It is most frequently used when the proposed position change would carry out the terms of an established rotation policy of the agency. It is also appropriate, however, in any situation in which the agency has determined that the change would serve the best interests of the service. It may not be used to accomplish a reduction-in-force action or to move an employee between the competitive service and the excepted service.

Moving the employee to a new location is not an adverse action such as to invoke the job protection procedures discussed in Section 5. However, if the employee is to be separated for failure to accept the new assignment, the applicable procedures for the separation must be followed.

SEPARATION—FAILURE TO ACCOMPANY ACTIVITY TO (CITY AND STATE)

This action is appropriate for use when it is necessary to separate an employee (other than a temporary appointee) who fails to accompany his position when it is moved to another organizational or geographic location. The employee's failure to accompany his position in such a transfer of function, does not automatically terminate his services, nor make any resulting separation voluntary. Therefore, it is necessary to comply with appropriate procedures in separating the employee, rather than processing the separation as a resignation or abandonment.

SUSPENSION

★Suspension is a means of placing any class of employees in an involuntary non-duty and non-pay status. This includes periods of enforced leave which under certain circumstances are tantamount to suspensions. (See discussion under Enforced Leave below.)★ It may be for disciplinary reasons, or pending the results of an inquiry or investigation of an act or situation which may warrant disciplinary action if the employee is found at fault.

Suspension acts to deprive the employee of regular income and the agency of normal services, and so should be ordered only after a responsible determination that a less severe disciplinary action (admonition or reprimand) is not appropriate, or that the employee's continuance on duty during investigation would not be in the best interests of the Government.

It may on occasion be necessary to suspend an employee during the advance notice period of a proposed removal. The suspension and the removal may be based on the same set of facts, or there may be separate and distinct causes for each action. In either case, there are two different actions, and each is subject to the procedures described in Section 5. The agency may initiate the two actions by issuing one notice proposing both, or it may issue a notice of proposed suspension and a separate

notice of proposed removal. If one notice is made to serve, it must be procedurally correct with respect to each action. If two separate notices are issued, at the same time or not, each must be procedurally correct in itself. If they relate to the same set of facts, each notice should refer to the other.

An employee, whether or not a veteran, who is covered by Section 9402(a)(4) of the Commission's regulations must be given an opportunity to reply to the notice of any proposed suspension, regardless of length, and must be given a notice of final decision before it becomes effective. This is also true for all veteran employees under Part 22 of the regulations for suspensions in excess of 30 days. For suspensions of 30 days or less which are imposed during the period of advance notice, there is a special procedure for employees who are not covered by Part 9 but are covered by Part 22 (see Appendix C of Section 5).

★*Enforced Leave.*—In a personal, disciplinary-type situation, the placing of an employee on leave without his consent when he is ready, willing, and able to work constitutes a suspension. When such an action is taken, the appropriate procedures prescribed by Part 9 or Part 22 must be followed.

For an employee to be "ready, willing, and able to work", he must be willing and available to perform his assigned duties and his conduct or his physical or mental condition do not create a situation in which his presence at the place of employment will constitute an immediate threat to Government property or to the well-being of the employee himself, his fellow workers, or the general public. When the employee is *not* ready, willing, and able to work, he may be placed on either annual or sick leave as the circumstances and the status of his leave accounts require, and such action will not be considered to be a suspension.★

TERMINATION

Termination is the action used to separate an employee serving under a temporary appoint-

ment limited to one year or less, in either the competitive or the excepted service, for any reason not specifically covered by another type of personnel action. Termination is not the proper action to separate an employee because of gross inefficiency, poor deportment, or other deficiencies personal to the employee that warrant removal. A person serving under temporary appointment pending establishment of a register may be separated by "Termination" for causes not serious enough to warrant removal, or by means of Separation—Displacement, as discussed in Section 3, when displacement is appropriate. A reemployed annuitant, whether or not serving under temporary limited appointment, may be terminated at any time at the discretion of the appointing officer. (The term "reemployed annuitant" is defined in Part 1 of the Commission's regulations.)

An employee serving under excepted appointment may be separated in accordance with any regulations or practices that the head of the agency concerned finds necessary, unless the employee himself is covered by ★★Part 22 of the Commission's regulations (see Section 5).

REASSIGNMENT (REDUCTION IN RANK OR COMPENSATION)

S-1-18

The personnel actions previously described in this section generally represent the situations in which job protection procedures apply. However, a reassignment may result in an employee's "reduction in rank or compensation", as that phrase is used in Section 14 of the Veterans' Preference Act of 1944. Therefore, when the reassignment of an ★★employee is initiated by the agency, the appointing officer should consider whether the employee's rank or compensation will be reduced. If a reduction in rank is apparent, the job protection procedures described in Appendix C of Section 5 should be carefully followed. A reduction in compensation may occur in a reassignment when, for example, a wage board employee is shifted to a new locality with a different wage schedule. When such a reduction in compensation affects an employee, ★★the agency must follow the applicable procedures in Appendix C of Section 5.

Appendix C to Section 5

Procedures Under Part 22 of the CSC Regulations

The steps outlined below must be followed in taking any of the personnel actions discussed in Section 4 (except a suspension for 30 days or less which is not a part of some other adverse action) against an employee eligible for veteran preference who is

- (a) serving in a competitive position under a nontemporary appointment and has completed his probationary or trial period, or
- (b) serving in an excepted position and has completed more than one year of current continuous service in the same line of work under one or more appointments, either temporary or otherwise.

With respect to suspensions of 30 days or less, it should be noted that veteran preference eligibles serving with competitive status are not protected by Part 22 of the regulations, but are entitled to the protections of Part 9 (see Appendix A).

The major provisions of law and regulation are set forth below in bold face type, followed by additional requirements, suggested guides, and interpretations.

- A. The employee must be notified in writing of the action proposed, the reasons therefor, and of his right to reply.
 - 1. The notice must state specifically what action is proposed. Vague proposals such as "appropriate disciplinary action" or "change to lower grade (without identifying the proposed lower grade or salary)" are inadequate. The advance notice need not give the proposed effective date; however, the agency must allow at least 30 full calendar days after the notice is delivered to the employee (not counting date of delivery) except that:
 - a. No advance notice is required when furlough without pay is necessary because of unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or emergencies requiring immediate curtailment of activities.
 - b. Thirty days' advance written notice is not required when there is reasonable cause to believe the employee to be guilty of a crime for which a sentence of imprisonment can be imposed. However, the employee must be given as much advance notice and opportunity to answer as will be reasonable under the circumstances, and at least 24 hours in any case.
 - 2. The notice must state any and all reasons supporting the proposed action, specifically and in detail (names, times, places, etc.). The reasons must be given specifically enough, and in sufficient detail, that the employee may understand clearly the alleged grounds for the proposed action, know the particular offenses or deficiencies charged against him, and thus be in a position to submit his defense. *It is suggested that any presentation of supporting reasons be concluded with this statement: "If you do not under-*

stand the above reasons for this proposed action, contact ----- for further explanation." The agency must not expect an offer of further explanation to make up for any lack of specificity or detail in the written statement of the reasons for the proposed action. In addition, if a flaw is detected in the notice, whether as a result of a request for further explanation or otherwise, the faulty notice should be cancelled and a new notice issued. Reasons or charges relying upon security requirements (withdrawal or denial of clearance, etc.), must not be used to support proposed actions under these instructions. It is not necessary for the notice to state all the derogatory information or potential charges which may exist against an employee; only those matters relied upon as the basis for the proposed adverse action need be discussed.

3. It is the employee's right to reply in writing, in person, or both, and to submit affidavits in support of his answer, showing why any of the charges or reasons are inaccurate and any other reasons why the proposed action should not be taken. The notice must make it clear that it is only a proposed action and not a matter already decided. The notice must tell the employee that he has a ★right to reply, both personally and in writing, and it should tell him that his reply, if any, will be considered. It should identify the person or office to receive a written reply and the person or persons who will receive an oral reply. A reasonable time must be allowed for preparation and return of a written reply, as well as for requesting and making a personal reply and the employee should be informed how much time is allowed. At least 10 calendar days should be allowed for a written reply wherever possible and more in some cases if the circumstances justify more time.
4. If the employee requests an opportunity to make an oral reply, he is entitled to be

heard by an agency representative or representatives with authority either to take or to recommend final action. This recommending authority need not necessarily be exclusive, nor is it mandatory that the resulting recommendation be the last submitted to the person or persons having authority to make the final decision on the proposed adverse action. The employee is not entitled to a formal hearing or to examine witnesses as a matter of law or Civil Service Regulation although an agency may grant him this privilege if it wishes to do so. However, the employee must be given an opportunity to make any oral plea he wishes which he believes may sway the decision on his case. It is not proper to restrict his reply to matters dealing solely with his guilt or innocence of the charges preferred against him but he must be permitted to plead extenuating circumstances or make any other representations he deems proper. The agency must grant this opportunity for an oral reply before the final decision is reached so that all of the information or arguments he offers may be considered in reaching a decision.★

B. Status during notice period.

1. The employee must be kept on active duty unless the agency determines that it would be inadvisable to do so. ←
2. If the employee cannot reasonably be kept in his official position, he may be detailed to a suitable position during the notice period.
3. If the agency determines that it is inadvisable to keep the employee on active duty, the alternatives include:
 - a. Annual leave or leave without pay with the employee's consent.
 - b. Suspension, if an emergency situation requires it.
 - (1) If prompt suspension of an employee who is also covered by

Section 9.202 of the regulations is considered necessary, the agency may require the employee to submit his reply within whatever reasonable time the circumstances allow, but not less than 24 hours in any case. In no case may the suspension of a veteran under these provisions exceed 30 days. If the suspension is one of two proposed adverse actions, as when an employee is to be suspended during the period of advance notice of a proposed removal, the agency may cover both actions in one notice or may issue two notices. If one notice is used it must clearly state the two separate proposals, give the reasons for each, and inform the employee of his right to reply to each.

- (2) If the veteran is not covered by Section 9.202 of the regulations, and in an emergency is proposed to be suspended for 30 days or less during the period of advance notice of proposed adverse action, the agency is required by the Commission's regulations to give him written notice of the proposed suspension at least 24 hours in advance. The agency is also required to make a record of the reasons for not retaining him in an active duty status.

c. "Administrative" or "official" leave without charge to the employee's annual or sick leave. The limited circumstances in which absence with pay may be authorized are discussed by the Comptroller General in 38 Comp. Gen. 203. A summary of this decision is given on page Z1-242.

C. The employee must be furnished a written decision on the proposed action as soon as

practical following receipt of his reply or lapse of time allowed for reply.

1. Bona fide consideration must be given to any reply received from the employee. A decision must be stated with respect to the accuracy of each charge or reason, and whether those found valid reasonably support the proposed action; that is, will promote the efficiency of the service. When appropriate, the proposed action may be withdrawn or a less severe action may be substituted without making it necessary to issue a new notice of proposed action. *The agency may not, however, substitute a more severe action than the one originally proposed, nor may it rely on charges or reasons which were not stated in the initial notice; any such change will require that the entire procedure be started anew.*
2. If the decision is to effect the action originally proposed, or some action less adverse to the employee, he must be given a dated and written notice of this decision promptly after it is reached and, in any event, no later than the time the action will be made effective.
3. The notice should include the name of the employing activity and the employee, and the date upon which charges were issued. It should clearly state the decision. It must state which of the charges are relied on as the reason for taking the adverse action, and which of the charges or reasons have been withdrawn, if any. This may be accomplished by repeating the charges or reasons originally issued and, with respect to each charge or reason, stating whether it has been found to be sustained. This may also be accomplished without repeating the charges or reasons, by identifying each by specific reference to the number assigned to it in the advance notice of proposed action, and

CHAPTER X-4

Separated Career Employee (SCE) Program

SECTION	PAGE	SECTION	PAGE
1. GENERAL PROVISIONS.....	X-4-1	Entitlement to benefits.....	X-4-3
Purpose.....	X-4-1	Action by the Commission.....	X-4-4
Benefits provided.....	X-4-1	Audit.....	X-4-4
2. OPERATION OF PROGRAM.....	X-4-3	Action by agency.....	X-4-5
Application for benefits.....	X-4-3	Reporting.....	X-4-5

Section 1. General Provisions

PURPOSE

This chapter outlines the assistance given by the Commission to help place employees who have been involuntarily separated or furloughed by reduction in force, separated or resigned for failure to accompany a transferred function, ★ or separated for failure to accept new assignment to another commuting area.¹ ★ Such assistance is reserved to persons who have civil service status and who were separated while serving in tenure groups I or II. Both the purpose of the program and the procedures by which it operates are supplemental to those outlined in Chapter R-3, since the primary responsibility for the reemployment of a separated career employee rests upon the separating agency. The program is designed to provide continued employment in the commuting area in which the employee was separated, but if the employee is not placed the Commission will extend the benefits to certain other areas at the employee's request.

BENEFITS PROVIDED

The types of benefits provided and the persons entitled to these benefits are described below. Persons who were in group II solely because they were serving in "obligated positions" will be considered as group I for the purpose of the following instructions.

Priority referral.—This is the referral to va-

cancies ahead of all other eligibles, or referral to any agency to displace a group III employee serving in a position to which the separated career employee is entitled. This benefit is available only to an employee who was in tenure group I when separated from a competitive position by reduction in force.

Circulation of employment briefs.—This is the condensation of a separated career employee's experience and training history into employment briefs for each of the two positions for which he has applied, and the circulation of such briefs. The Commission office will send copies of the briefs to each appointing officer and board of examiners in the area under its jurisdiction at locations where the separated career employee has agreed to accept appointment. When filling vacancies, including those normally filled from within, agencies must give bona fide consideration for placement to persons whose briefs indicate that they are qualified and available for the position. The Commission will not issue direct hire authority for any position for which the briefs show qualified and available separated career employees entitled to consideration. This benefit is available only to an employee who was in tenure group I when separated from a competitive position by reduction in force.

Priority certification.—This is certification from registers to vacancies ahead of all other eligibles, except on registers where 10-point

¹ Effective May 18, 1958

preference eligibles with a compensable service-connected disability of 10% or more are placed at the top. On such registers, however, a separated career employee entitled to float to the top will be certified ahead of all other 10-point eligibles, and other separated career employees will be listed ahead of all other eligibles who do not float to the top of the register. Former employees who were in group I or II in competitive positions when separated or furloughed by reduction in force, who were separated or resigned for failure to accompany a transferred function, ★ or who were separated for failure to accept new assignment to another commuting area,¹★ are eligible for this benefit. Employees in group I or II who possess competitive status and who are

similarly separated from excepted positions are also eligible. However, a separated career employee will not be given priority certification and priority referral simultaneously to grades at or below the grade from which separated, in the same commuting area.

Regular order of certification.—This is certification to vacancies in regular register order. A separated career employee will be entered in regular order on registers for positions and grades for which qualified, including grades higher than that held at separation. He will remain on such registers after expiration of his eligibility for the benefits outlined above. This benefit is available to any former employee entitled to priority certification.

¹Effective May 18, 1958

RULES AND REGULATIONS

CIVIL SERVICE RULES

Sec. 101. The Civil Service Rules are hereby amended to read as follows:

Rule I—Coverage and Definitions

Sec. 01.1 Positions and employees affected by these Rules. These Rules shall apply to all positions in the competitive service and to all incumbents of such positions. Except as expressly provided in the Rule concerned, these Rules shall not apply to positions and employees in the excepted service.

Sec. 01.2 Extent of the competitive service. The competitive service shall include: (a) All civilian positions in the executive branch of the Government unless specifically excepted therefrom by or pursuant to statute or by the Civil Service Commission (hereafter referred to in these Rules as the Commission) under section 06.1 of Rule VI; and (b) All positions in the legislative and judicial branches of the Federal Government and in the Government of the District of Columbia which are specifically made subject to the civil-service laws by statute. The Commission is authorized and directed to determine finally whether a position is in the competitive service.

Sec. 01.3 Definitions. As used in these Rules:

(a) "Competitive service" shall have the same meaning as the words "classified service", or "classified (competitive) service", or "classified civil service" as defined in existing statutes and executive orders.

(b) "Competitive position" shall mean a position in the competitive service.

(c) "Competitive status" shall mean basic eligibility to be noncompetitively selected to fill a vacancy in a competitive position. A competitive status shall be acquired by career-

conditional or career appointment through open competitive examination upon satisfactory completion of a probationary period, or may be granted by statute, executive order, or the Civil Service Rules without competitive examination. A person with competitive status may be promoted, transferred, reassigned, reinstated, or demoted without taking an open competitive examination, subject to the conditions prescribed by the Civil Service Rules and Regulations.

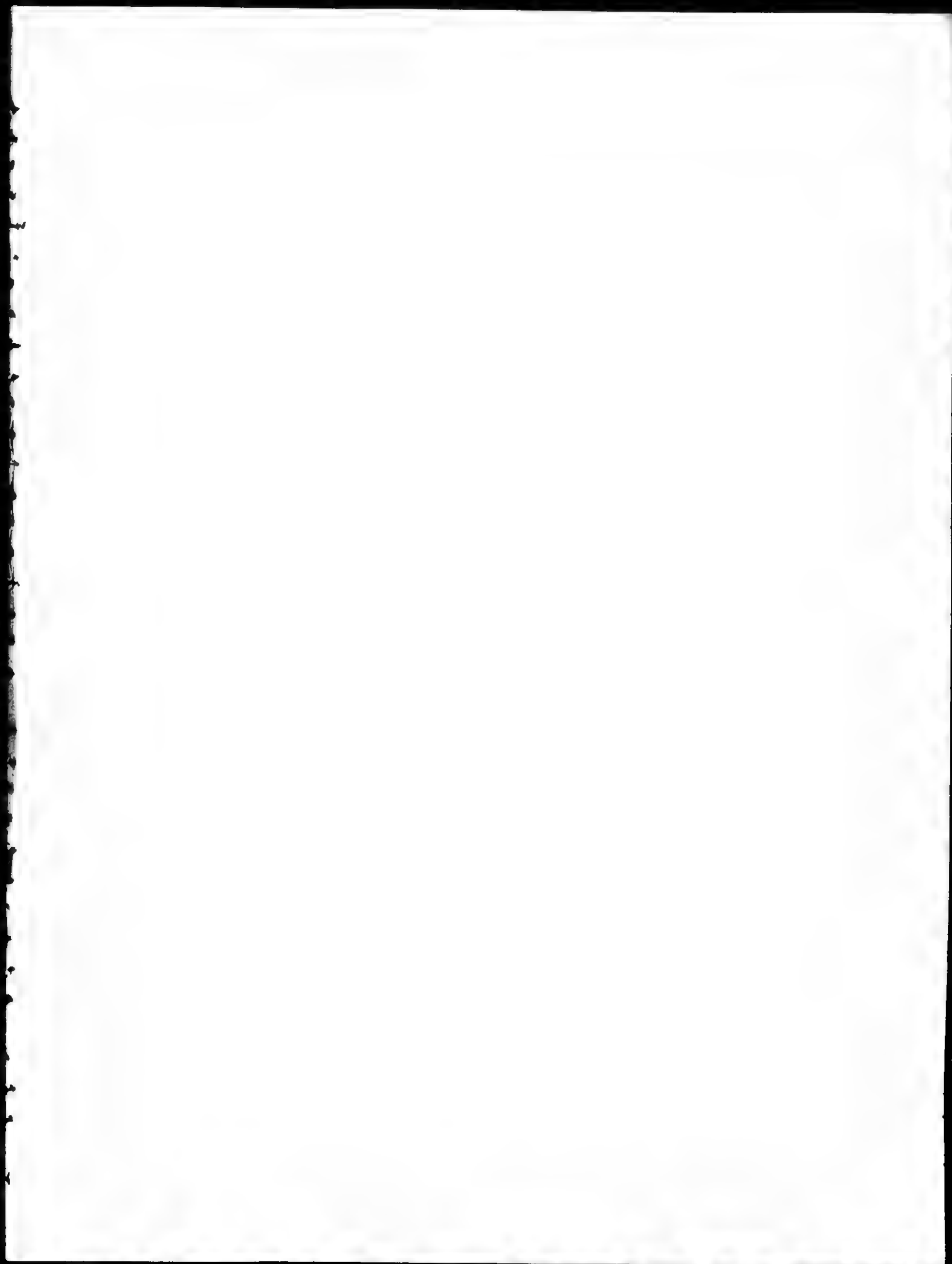
(d) An employee shall be considered as being in the competitive service when he has a competitive status and occupies a competitive position unless he is serving under a temporary appointment: *Provided*, That an employee who is in the competitive service at the time his position is first listed under Schedule A, B, or C shall be considered as continuing in the competitive service as long as he continues to occupy such position.

(e) "Tenure" shall mean the period of time an employee may reasonably expect to serve under his current appointment. Tenure shall be granted and governed by the type of appointment under which an employee is currently serving without regard to whether he has a competitive status or whether his appointment is to a competitive position or an excepted position.

Sec. 01.4 Extent of the excepted service.

(a) The excepted service shall include all civilian positions in the executive branch of the Government which are specifically excepted from the requirements of the Civil Service Act or from the competitive service by or pursuant to statute or by the Commission under section 06.1 of Rule VI.

(b) "Excepted service" shall have the same meaning as the words "unclassified service",



REPLY BRIEF FOR APPELLANT

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 20,219

WILFRED HANDLER,
Appellant,

v.

SECRETARY OF LABOR, *et al.*,
Appellees.

APPEAL FROM A JUDGMENT OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals
for the District of Columbia Circuit

FILED MAR 6 1967

Nathan J. Paulson
CLERK

WILFRED HANDLER

P. O. Box 1052
Baltimore, Maryland 21203

Appellant, pro se

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 20,219

WILFRED HANDLER,
Appellant,

v.

SECRETARY OF LABOR, *et al.*,
Appellees.

APPEAL FROM A JUDGMENT OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

REPLY BRIEF FOR APPELLANT

INDEX

REGULATIONS, AND PROVISIONS OF FEDERAL PERSONNEL MANUAL AND OF U.S. ORGANIZA- TION MANUAL INVOLVED	1
PRELIMINARY STATEMENT	2
AMENDED CONCLUSION (App. Br. 60) ¹	2
ARGUMENT:	
Government ¹ Point I — "Neither Arbitrary Or Capricious"	3
Government Point I (A) — Removal	3
The Corrected Notification	4
Government Point I (B) — The 30 Day Notice	6
Government Point II — The District Court's Protective Order	6
Government Point I (D):	
The Civil Service Commission Failed To Consider, in Good Faith, Certain Specific Evidence Submitted to It by Appellant	8
The Civil Service Commission Decisions Are Demonstrably Fraudulent.	8
The Government's Irrelevant, Unreliable Facts And Disguised Argument	9
Government Point I (C) — Was the Transfer Unauthorized, Unlawful, and Fraudulent?:	
The Forgery:	
The Civil Service Commission Made No Findings	12
Government Counsel's <i>Post Hoc</i> Adjudica- tion Relies on Material That Is:	
(A) Not Relied on by the Civil Service Commission	14

¹ The abbreviation "App. Br." refers to the brief for appellant. Although the United States is not a party to the instant action, for clarity and convenience appellees are referred to collectively as the "Government," and appellees' brief is referred to as "Govt. Br."

(iv)

(B) Inadmissible, Under Civil Service Commission Regulations	15
(C) Too Late, as a Matter of Law	16
(D) Fraudulent	16
Suppression of the Grievance Appeal-brief:	
The Question Is Subject to Judicial Review	16
The Civil Service Commission (The Board) Made No Relevant Findings	17
The Government Relies Entirely on a Proved Perjurer.	17
Appellant's Grievance Appeal-brief Dis- credits Messrs. Finnegan and McVeigh	19
Messrs. Finnegan and McVeigh's Pur- ported Forwarding of Grievance Brief to the Secretary: Corroboration Is Refused	20
Appellant's Grievance Appeal-brief: Labor Withheld It from the Civil Service Comm.; the Commission Withheld It From the Dis- trict Court	22
Analysis of Record Proof: (a) The Grievance Appeal-brief Was Fraudulently Withheld From The Secretary of Labor. (b) The Memoran- dum "Authenticating" the Secretary's Griev- ance Decision Is Fraudulent.	23
CONCLUSION	26

CITATIONS

CASES:

* Burlington v. United States, 371 U.S. 156 (1962)	6, 13
Dabney v. Freeman, 123 U.S. App. D.C. 166, 358 F.2d 533 (1965).	13
S.E.C. v. Chenery Corp., 332 U.S. 194	6, 13
* Schmidt v. The United States, 145 Ct. Cl. 632 (1959).	11
United States v. Morgan, 313 U.S. 409 (1941)	17

* Authorities chiefly relied upon are marked by asterisks.

(v)

REGULATIONS:

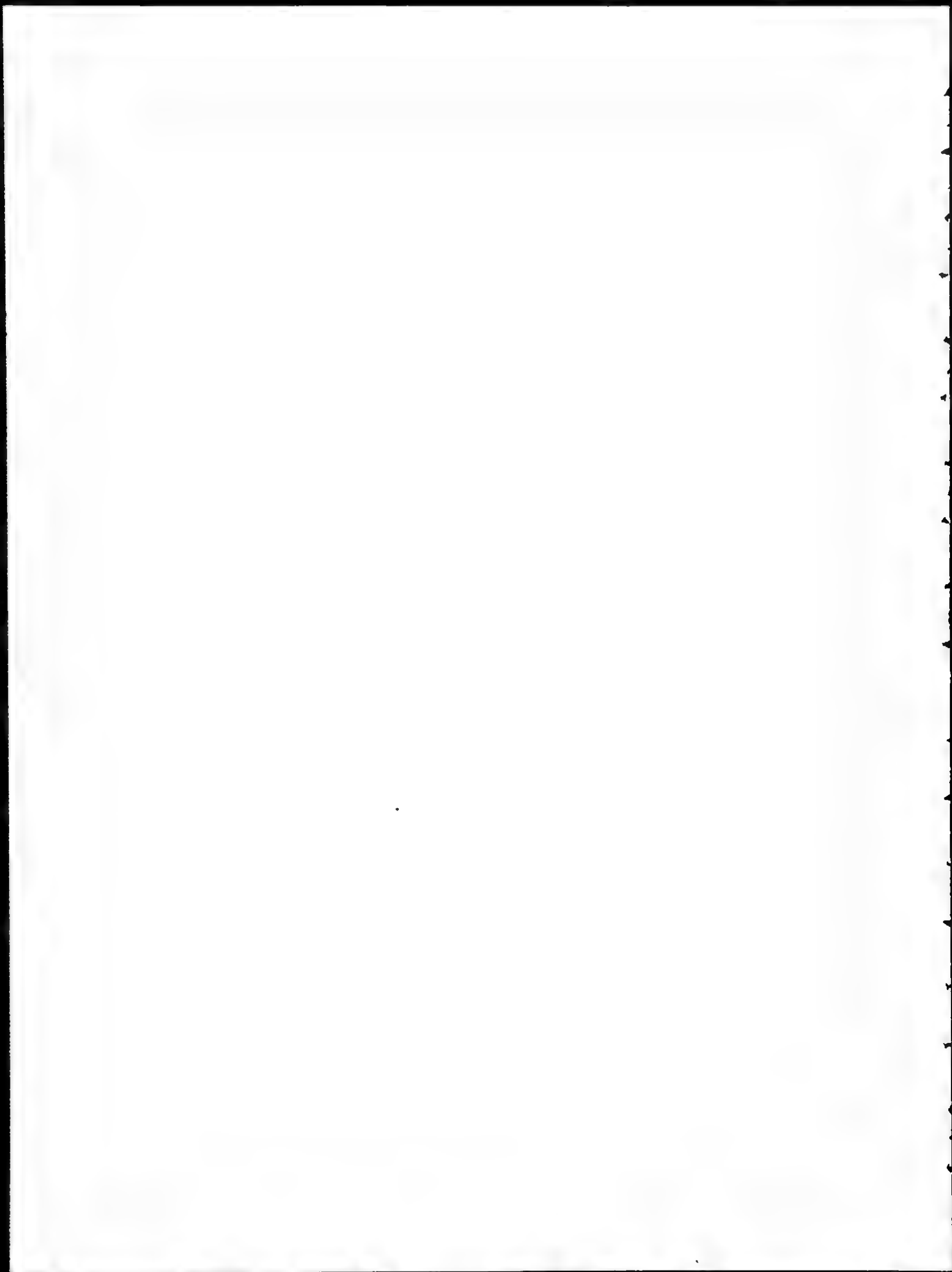
* 5 C.F.R. 22.401(b)	24
5 C.F.R. 22.501	13
5 C.F.R. 22.502	14

FEDERAL PERSONNEL MANUAL:

* Pages S-1-4 and S-1-4.01	4-5
--------------------------------------	-----

MISCELLANEOUS:

U.S. Government Organization Manual, 1965-1966 Page 316.	8
---	---



REGULATIONS, AND PROVISIONS OF FEDERAL PERSONNEL MANUAL AND OF U. S. ORGANIZATION MANUAL INVOLVED

CODE OF FEDERAL REGULATIONS (1949 Edition) Title 5, Part 22

SUBPART D — COMMISSION ACTION ON INITIAL APPEAL

Sec. 22.401 (b) *Evidence*. Statements of witnesses shall be by affidavit, when practicable, and relative to the adverse decision.

SUBPART E — COMMISSION ACTION — APPELLATE REVIEW

Sec. 22.501 Appeals to the Board of Appeals and Review. . . . When an employee . . . elects to appeal from a decision of the Chief, Appeals Examining Office, . . . such appeal shall be made to the Board of Appeals and Review. . . , U.S. Civil Service Commission

Sec. 22.502 Board Procedures. (a) *Scope*. The Board will review the entire record of the case and all written representations submitted to the Board relevant to the appeal.

FEDERAL PERSONNEL MANUAL

Pages S-1-4, S-1-4.01 (Inst. 18, January 18, 1961)

CANCELLATION OR CORRECTION OF ACTIONS

In general, but with the exceptions noted below, when an authorized separation has become an accomplished fact, it cannot be rescinded One exception to this rule is permitted and a separation may be cancelled when the agency determines that the action was unjustified or unwarranted, and compensation for the period during which the unwarranted action was in effect is paid under Public Law 623. . . . It is . . . permissible to correct an erroneous report of separation by substituting a more appropriate type of action which does not change the essential fact of separation. For example, a removal for absence without leave might be corrected to show resignation if it is found that the

employees had, in fact, resigned before the effective date of the removal action.

Except for the circumstances discussed above, the agency generally is not authorized to set aside a separation after its effective date.

U. S. GOVERNMENT ORGANIZATION MANUAL, 1965-1966

Page 316

All functions of the Department are vested in the Secretary of Labor.

PRELIMINARY STATEMENT

(1) The instant appeal does not merit serious consideration. Appellant's claims are "patently meritless" (Govt. Br. 12),¹ "so insubstantial as not to warrant any discussion" (Govt. Br. 13); and appellant is an irresponsible libeler and/or a fool. (2) Or, the official Government acts of which appellant complains are frauds, frauds of which the United States Attorney's Office is aware, the perpetrators of which are criminally prosecutable by said United States Attorney's Office, but the validity of which, nevertheless, said United States Attorney's Office seeks to have this Court affirm.

Obviously, of the foregoing two alternatives, the eminent credibility of the first is matched by the incredibility of the second. It is to overcome this presumption of Government rectitude — usually warranted, appellant thankfully notes — that this reply brief is submitted.

AMENDED CONCLUSION (App. Br. 60)

Conclusion 2(b), 2(c) (App. Br. 60): The Government would delete these conclusions (Govt. Br. 13, Footnote). Appellant agrees. Appellant's claim for back pay should be dismissed for lack of jurisdiction,

¹ See Footnote No. 1, page (iii) *supra*.

as appellant did not, in the District Court, and does not, in this Court, choose to assert a claim for money against the United States.

Conclusion 2(a) (App. Br. 59): This conclusion should be amplified to show that the effective date of appellant's reinstatement to his position in Washington, D.C., be May 7, 1962. It was on that date, because he failed to accept his unauthorized transfer, that appellant was suspended for more than 30 days (until his ultimate discharge) without benefit of the provisions of Sec. 14 of the Veterans' Preference Act (Statement of the Case, Part II 6, App. Br. 7).

ARGUMENT

Government Point I — "Neither Arbitrary Or Capricious. . ."

The Government's conclusions of fact here are unsupported by the record, and its legal arguments are irrelevant. For example, contrary to the Government's assertions here, the record will show that: the officials who changed appellant's duty station to Detroit were *unauthorized*, *without* authority "duly delegated to them by the Secretary" (Govt. Br. 11); "the decision he [the Secretary of Labor] made on appellant's Grievance Appeal" (Govt. Br. 11) was *not* made by the Secretary; and appellant does *not* "seek to have the Secretary of Labor subjected to examination . . ." (Govt. Br. 11). As for the last assertion, the record shows that if anyone sought "to have the Secretary of Labor subjected to examination," it was the Civil Service Commission, and that appellant persistently objected (JA top 220 to middle 221).

Government Point I(A) — Removal

The specific discharge action effected against appellant was more severe than the action proposed, more severe than the action prescribed by the Federal Personnel Manual, hence without sanction in law, and appellant's Points I through V (App. Br. 28, 32-49) are valid — *if*, as appellant contends, the discharge action effected against him was "Re-

moval." The Government does not contest this. Hence appellant's Points I through V are unarguably valid, because in its pleadings the Government has *admitted* that the action effected was "Removal" (Compl. & Ans. Pars. 23, JA 10, 22).

Admitted or not, record-evidence establishes indisputably that the action effected against appellant was (and is) "Removal." But there is neither the space, nor, apparently, the need, to further document this. See, however, item (c), page 5, *infra*.

The Corrected Notification

The Government's Argument notes that the Civil Service Commission's Board of Appeals and Review took note that the Department of Labor "issued a corrected 'Notification'" (Govt. Br. 13, 1st sentence). (But Labor's *decision* to remove appellant — JA 41 — was not "corrected.") Did said corrected notification change the action previously effected (which, admittedly, was removal)? The answer is clearly "No" because, as will be shown immediately below: (a) The Federal Personnel Manual prohibits any such change; (b) The Department of Labor indicated the action would not be changed; (c) The Appeals Examining Office (Civil Service Commission) found there was no change; (d) The Board of Appeals and Review (Civil Service Commission) found the corrected notification "inconsequential."

(a) The Federal Personnel Manual — See the Manual's pertinent provisions at pp. 1-2, *supra*: Clearly, after the effective date of a separation action, only an erroneous *report* of said action, but not the action itself, may be changed. Appellant's removal was effective August 3, 1962 (JA 43, item 13). The corrected notification was issued and dated September 18, 1962 (JA 95, bottom). Although not warranted, the removal action had in fact been effected and correctly *reported*. The Department of Labor was unauthorized "to set [the removal] aside . . . after its effective date." Unless, as provided by the Federal Personnel

Manual, the "separation"² was "cancelled when the agency determine[d] that the action was unjustified or unwarranted, and compensation for the period during which the unwarranted action was in effect [was] paid under Public Law 623. . ." (Federal Personnel Manual, p S-1-4.01 - page 1, *supra*.)

(b) Labor — The Department of Labor implied that the corrected notification would *not* actually change the action effected. Under oath, Labor's representative testified:

"With respect to the adverse action we believe it to be sound, both on procedure, and on merit, and in the best interest of the Government. However, to eliminate confusion on the point of procedure, the Agency is prepared to correct the Standard Form 50 [notification]" (JA 216)

(c) Appeals Examining Office (Civil Service Commission) — The Appeals Examining Office noted that a corrected Notification had been issued (JA 95 at bottom). But it nevertheless concluded its decision with: "In light of all the evidence . . . we find that . . . the removal of Mr. Handler was warranted . . . and that such action was not arbitrary, unreasonable or capricious. . . . It is recommended that no change be made in . . . the removal of Mr. Handler on August 3, 1962." (JA 105)

(d) Board of Appeals and Review (Civil Service Comm.) — As for the Board of Appeals and Review, the most precise label it saw fit to apply at any time to the action effected is "discharge." (Last par. of JA 116 through JA 120) And both actions — removal, and separation-failure to accompany activity — are discharges. It follows, therefore, that the Board of Appeals and Review failed to distinguish between the two actions, and that it failed to find *which* of the two was effected by the original *or* the "corrected" notification. And, of course, in any

² See definition of "separation" at App. Br. 36.

event, the Board of Appeals and Review found the notification terminology "inconsequential." (JA 117) See the rule (and its corollary) enunciated in the *Chenery* case (332 U.S. at 196-197) and cited in the *Burlington* case (371 U.S. at 168-169), both cases cited on page 13, *infra*.

Thus significance for the corrected "Notification" was neither claimed nor permitted. But the "correction" does demonstrate that Labor knew it had effected an excessively severe action. So did the Civil Service Commission. When challenged, Labor's reaction was to hedge by defending the action effected, at the same time issuing a corrected, but ineffective, notification. The reaction of the Civil Service Commission's Board of Appeals and Review was to hedge by resorting to double talk, and by declining to identify the action effected, originally or as "corrected," any more precisely than "discharge."

Government Point I(B) — The 30 Day Notice.

Contrary to the Government's contention, this claim stands, rather than "falls," with appellant's substantiated — indeed admitted — claim that he was "removed" rather than "separated for failure to accompany activity."

Government Point II — The District Court's Protective Order.

The individuals that personally perpetrated the allegedly fraudulent Civil Service Commission decisions:³ Are they willing to be identified? The record does not say. Their identities are protected — appropriately enough — by a Protective Order.

The Government's Argument here is based first on an error of fact: The first paragraph of their Argument at Point II (Govt. Br. 14) indicates that the Government's Motion For Protective Order was granted on its merits. And the "fact" substantiating this indication is errone-

³ The decisions are fraudulent on their face — see p. 8, *infra*.

ous. The second sentence of the last paragraph beginning on page 8 of the Government's brief errs in implying that the District Court concurred with the Government views stated in the preceding paragraph of the Government brief's page 8. Actually, in granting the Government's Motion for a Protective Order, the District Court made it crystal clear that it did not reach the motion's merits (JA 123).

To the untimeliness of the Government Opposition to the interrogatories, appellant waived objections only on condition there be a hearing on the *merits*, and on condition the Government be precluded from filing a motion for summary judgment until there be a ruling on its then pending motion for a protective order (JA 26-27). Neither condition was met: There was no hearing on the merits (JA 123 *supra*); and the Government's motion for summary judgment was filed on May 6, 1965 (JA 27), which preceded not only the granting of the protective order on May 11, 1965 (JA 130), but also the May 10 oral argument on the motion for protective order (JA 123).

Rules 33 and 30 (b) rather than Rule 37 (d) F.R.C.P. govern untimeliness of motions for protective order, and this is not "a matter committed to the District Court's discretion" (Govt. Br. 14). The Government notes that "Appellant applied for no sanction." (Govt. Br. 14) *Before* the protective order was granted, appellant applied for no sanction because he had waived the Government's untimeliness (on certain conditions, one of which — the filing of the motion for summary judgment — had not been violated until just prior to oral argument on the Government's motion for protective order, another of which — a hearing on the merits — was not violated until oral argument started — *supra*). And *after* the granting of the protective order, there was no basis for requesting sanctions.

Government Point I(D)

The Civil Service Commission Failed To Consider, in Good Faith, Certain Specific Evidence Submitted to It by Appellant

As promised (last sentence, App. Br. 56), appellant further documents Point VIII of his Argument. Said further documentation of appellant's Point VIII (App. Br. 56) is found in the last par. beginning on page 22, *infra*.

The Civil Service Commission Decisions Are Demonstrably Fraudulent

As promised (App. Br. 57), to the extent time and space permit, appellant proves Point IX of his Argument (App. Br. 57).

Appeals Examining Office Decision (JA 86-105):

See the last complete paragraph on JA 104. Queries: Has the Commission consistently — or *ever* — held that, as opposed to other types of separation, failure to accept a change in assignment is grounds for *removal*? Were "reasons such as those given for the appellant's removal" sufficient to warrant *removal*? And was *removal* under these circumstances arbitrary?

Board of Appeals and Review Decision (JA 114-120):

Appellant appealed the Appeals Examining Office decision to the Board of Appeals and Review — see especially the last paragraph JA 107 through eight lines from the end of JA 108. The very first sentence of the Board's subsequent decision establishes its fraudulent flavor (JA 114). There we learn that appellant's name was "removed" from the Department of Labor's employment rolls — which, of course, would have happened no matter what the reason for the end of appellant's employment, whether it had been his death, resignation, retirement; or whether there had been effected against him *either* of the two discharge actions involved in this case: (1) separation-failure to accompany ac-

tivity, (2) removal. Again, at JA 116, the Board sagely speaks of Labor's "removing your [appellant's] name from its employment rolls." (Emphasis added, JA 116)

But of appellant's claim that "removal" is a term of art identifying the precise discharge action effected against appellant, and that it is an excessively severe action, what does the Board say? Actually, nothing — see App. Br. 44-45. The Board does purport to dispose of the claim with one cryptic sentence (JA 117, lines 9 et seq.). A sentence the fraudulence of which was earlier cited by appellant, first in his request of the Civil Service Commission that the Board's decision be reconsidered (JA 121), again in his Complaint (Compl. Par. 35, JA 15), and still again in oral argument in the District Court to rebut Government counsel's specific oral reliance on the sentence (JA 226).

Further discussion appears unnecessary, and space limitations preclude it. Mr. S. L. Elliott, Chief, Appeals Examining Office (at JA 105), and Mr. E. T. Groark, Chairman, Board of Appeals and Review (at JA 120): If they signed the decisions personally, and knew the contents and circumstances thereof, Messrs. Elliott and Groark are guilty of fraud. Quasi-judicial fraud. Pious fraud. Fraud perpetrated in the name of, and thus in contempt of, the United States Government. Fraud that is prosecutable by the United States Attorney's Office, but which said Office would have this Court validate.

The Government's Irrelevant, Unreliable Facts and Disguised Argument

Their Irrelevant and Unreliable Facts:

"[T]he Department of Labor's internal Grievance Procedure" "is not open to judicial review." (Govt. Br. 4) On this point the Government is firm. But of both its Counterstatement of the Case and its Supplemental Appendix, more than half is devoted to the Grievance (Govt. Br. 4-8; S.A. A5-A10). Since appellant agrees that the internal griev-

ance procedure is not subject to judicial review, he does not use valuable space to refute, at length, this Government material.

But briefly: Page 4 of the Government's Brief (Counterstatement of the Case) consists almost entirely of *findings* of the intra-Labor Grievance Committee and of Argument — but neither is labelled as such. Of the Grievance Committee's recommendation, the Government says "The Commissioner . . . approved this recommendation." (Govt. Br. 5) But this is not supported by the record. Appellant's grievance appeal-brief to the Secretary of Labor, from which only scanty excerpts are included in the Joint Appendix, dissected the Grievance Committee recommendation (e.g., JA 136). The impact of said dissection is evidenced by its suppression: appellant's grievance appeal-brief was withheld by Labor officials from the Secretary (page 16 et seq. *infra*) and, until its absence was challenged, withheld also from the District Court (Page 22 *infra*).

Their Disguised Argument:

Regarding Footnote No. 1, page 4 of the Government's Brief: A footnote in the Counterstatement of the Case — the Government obviously has little confidence in this pussillanimously disguised Argument. Firstly, No. 1(b) of appellant's "Questions Presented" is here cited by the Government erroneously; Question No. 1(b) relates to appellant's Point VI (App. Br. 49) and is entirely unrelated to the "Grievance Appeal matter."

Secondly, the Government's Footnote No. 1 appears to suggest that since appellant's admitted failure to accept a transfer to a new post of duty is a proper ground for discharge, the Court should inquire no further. Whether the transfer-order was authorized, whether the authorization was forged, or, if genuine, whether the authorization was obtained from the Secretary by fraudulently withholding from him an appeal of that transfer-order; i.e., whether the transfer-order was unlawful — as the Government would have it, this question is outside judicial review.

In the *Schmidt* case (*Schmidt v. United States*, 145 Ct. Cl. 632 (1959)), the Government took the same position. There the alleged unlawfulness of the transfer-order was grounded on its purpose, allegedly political. The Court inquired into that matter, holding — 145 Ct. Cl. at 636 — "If the order . . . [changing plaintiff-employee's post of duty] was issued to serve political purposes and not to promote the good of the service, *it was an unlawful order. . . . Being unlawful, it did not have to be obeyed. Hence, a refusal to obey was not insubordination.*" (Emphasis added)

Appellant's transfer-order was made by "the responsible officials of the Department of Labor who were *delegated final authority by the Secretary* to make the change-of-duty station determination in [appellant's] case." (Emphasis added) (Footnote, Govt. Br. 4) "[T]he wholly discretionary determination the Secretary of Labor entered in appellant's intra-Departmental Grievance Appeal matter is *immaterial* to his discharge [for failure to accept said transfer order.]" (Emphasis added — Footnote, Govt. Br. 4) The Government here relies on both of the foregoing statements. They are contradictory, for the Secretary's delegation of his final authority to the responsible officials, upon which the Government here relies, was made, if at all, by the Secretary's "discretionary determination [concerning] appellant's intra-Departmental Grievance Appeal matter,"⁴ which the Government here labels "immaterial." The Government's lack of confidence in this "Argument," as evidenced by its relegation to a Footnote in the Counterstatement of the Case, is well founded.

⁴ In its brief at page 11, the Government says:

"[Appellant's transfer-order was] made by the proper officials of the Department of Labor under the *authority duly delegated to them by the Secretary in his final decision on the Grievance Appeal . . .*" (Emphasis added) See also: Govt. Br. -S.A. A2, 3rd par.; App. Br. 6, Item 5)

Government Point I(C) — Was the Transfer
Unauthorized, Unlawful, and Fraudulent?

The Forgery

The Civil Service Commission Made No Findings.

Concerning appellant's claim that the cited authority for his transfer is a forgery, the Government's brief cites no Civil Service Commission findings — Government counsel here offer their own *post hoc* adjudication of appellant's appeal to the Civil Service Commission's Board of Appeals and Review. Moreover, as will be shown below, in their *post hoc* adjudication appellate counsel rely entirely on evidence that is: (A) not relied on by the Civil Service Commission, (B) inadmissible, under Civil Service Commission regulations, (C) too late, as a matter of law, and (D) fraudulent. The Government's Argument here fails to contest the following:

1. The authority for appellant's transfer to Detroit is the Secretary of Labor's ostensibly signed initials ("A.J.G.") on appellant's grievance decision (Point VII, 2, App. Br. 53 — see Footnote 4, p. 11, *supra*).

2. The Department of Labor concedes:

(a) If the grievance decision was in fact not "made by the Secretary," appellant's transfer-order to Detroit was invalid (App. Br. 12), and

(b) If that transfer-order was invalid, appellant was under no obligation to comply. (See Point VII 5, App. Br. 53; and see Item 3, bottom of JA 67, which comments on the letter at the bottom of JA 62.)

In short, the Government does not dispute that appellant was under no obligation to honor his transfer to Detroit, said transfer being unauthorized, *if* "A.J.G." was a forgery. Rather the Government contends (1) that "A.J.G." was not a forgery, and (2) that the "Secretary of Labor's

certification,^[5] J.A. 64, is wholly dispositive" of this claim (Govt. Br. 13). The short reply to this two pronged contention is that (as is shown below), both as to the alleged forgery and the "Secretary of Labor's certification" purporting to authenticate it, the Civil Service Commission's Board of Appeals and Review made no findings.

And it is said Board that, by Civil Service Commission regulations, must adjudicate appeals from decisions of the Commission's Appeals Examining Office. (CFR, 1949 Edition, Title 5, Part 22, Sec. 22.501) And it is to the Civil Service Commission in the first instance that Congress entrusted appeals of the type made by appellant. As for appellate counsel's Argument on the matter: "The courts may not accept appellate counsel's *post hoc* rationalizations for agency action; *Chenery*^[6] requires that an agency's discretionary order be upheld, if at all, on the same basis articulated in the order by the agency itself." *Burlington Truck Lines v. United States*, 371 U.S. 156, 168-169 (1962)

And, normally, neither would the Court make findings on these questions, because ". . . the standard of judicial review is that of whether there is evidence of substance in [the Civil Service Comm. record] which supports the Commission's view of the matter." *Dabney v. Freeman*, 123 U.S. App. D.C. 166, 168, 358 F.2d 533, 535 (1965), and cases cited therein. But as was stated *supra* — and as is demonstrated in the next paragraphs — concerning the alleged forgery and the Secretary's "authentication" thereof, the Commission's Board of Appeals and Review expressed *no* view. As has already been demonstrated, moreover,

[5] In referring to "certified" Civil Service Commission records on page 11 of its brief, the Government uses the word justifiably, since those records were "certified"; see JA 28 for certificate. But here two pages later in its brief, the Government's allusion to the Secretary's "certification" can only be calculated to mislead, especially since appellant argues that the Secretary's statement is inadmissible because not in affidavit form. (Item 6(a)(1), JA 68; App. Br. 54)

[6] *Securities and Exchange Comm'n. v. Chenery Corp.*, 332 U.S. 194, 196-197 (1946).

by reference to another matter, the Board's decision sustaining appellant's removal is fraudulent. And since, as will be shown *infra*, to refute appellant's claim of forgery there is in the record *nothing* but the unsupported self-serving testimony of, and/or evidence prepared and submitted by, a *proved perjurer*, and since to sustain appellant's claim of forgery there is in the record abundant evidence, including Department of Labor officials' persistent refusals to corroborate the self-serving evidence and testimony of said proved perjurer, the Court is warranted here in concluding that because it was inconsistent with its pre-determined fraudulent decision to sustain appellant's removal, the Commission's Board of Appeals and Review suppressed its own pertinent findings -- which were that "A.J.G." is a forgery and the Secretary's subsequent "authentication" thereof is a fraud. In short, there is no need to remand this question to the Commission.

(A) Not Relied on by the Civil Service Commission

"The Board will review the entire record of the case and all written representations submitted to the Board relevant to the appeal." (CFR, 1949 Edition, Title 5, Part 22, Sec. 22.502) That appellant made specific "representation" to the Board about the inadmissibility of the evidence now relied on by counsel to refute the forgery claim, and that the Board did in fact fail to make findings on this representation and on the alleged forgery claim itself, and that these failures are reflected in the Board's ultimate decision,⁷ is demonstrated thus:

In enumerating the essential facts of record, the Board commences with appellant's transfer, with no mention of any special authority for said transfer. (See item (3), bottom JA 114.) *Nowhere* in its decision does the Board allude to any *special* authority for appellant's transfer. The Board notes that appellant's transfer was made by officials "exer-

⁷ After stating its findings, the Board sustained appellant's discharge "for the reasons set forth, herein" in its decision (JA 120).

cising authority lawfully delegated to them by the Secretary of Labor for making *such changes* in the assignments of the Department's employees." (Emphasis added) (Bottom JA 119) The allusion here is obviously to routine employee-transfers made by officials to whom the Secretary of Labor delegates *blanket authority*;⁸ the allusion is obviously not to the allegedly forged "A.J.G.," the *specific* authority cited by the Department of Labor for transferring appellant. At his Civil Service Commission hearing, contending that his transfer was without authority (2nd par., JA 212; 1st 3 complete pars., JA 196) and unlawful (3rd, 4th pars., JA 197), appellant alluded to the alleged forgery. But the Board found only: "As to the alleged illegality of the change in duty station, you have cited no law which prohibited the Department of Labor from changing your assigned duty station, and the Board knows of none." (Bottom JA 119) Obviously, then, the Board did not here consider appellant's claim that "A.J.G.," the acknowledged authority for his transfer, was a forgery.

(B) *Inadmissible, Under Civil Service Commission Regulations*

Nor, of course, did the Board consider Labor's answer to the foregoing forgery claim, namely "The Secretary of Labor's certification, J.A. 64" (Govt. Br. 13), which the U.S. Attorney's Office nevertheless *now* contends is "wholly dispositive." Appellant, on the other hand, contends that the Secretary's "certification" is inadmissible under Civil Service Commission regulations, having made that contention first to the Commission's Appeals Examining Office (Item 6(a) (1), JA 68) and then to the Commission's Board of Appeals and Review. (Item (c), JA 109. Page 7 of the Appeals Examining Office decision, cited at JA 109,

⁸ "All functions of the Department are vested in the Secretary of Labor." (U.S. Government Organization Manual, 1965-1966, page 316) When appellant appealed his grievance decision to the Secretary of Labor, authority to transfer appellant, hitherto residing in those officials delegated blanket authority to make routine transfers, admittedly reverted to the Secretary. And that authority remained with the Secretary until he redelegated it, ostensibly with his signed "A.J.G."

is found at JA 94-95.) But neither Civil Service Commission decision acknowledges appellant's contention. It is valid.

(C) Too Late, as a Matter of Law

Inadmissible under Civil Service Commission regulations or not, relied on by the Commission or not, as a matter of law the "Secretary of Labor's certification" (Govt. Br. 13) came too late. Said "certification" confirms appellant's allegation that "A.J.G.," the authority for appellant's transfer, was not in the Secretary's handwriting (JA 63, 64), and thus, on its face, was invalid. Before accepting a new post of duty almost half-way across the country, appellant was entitled to a transfer-order that was valid on its face (Even military discipline would so provide — or do Government counsel argue that Department of Labor discipline must exceed that of the Armed Forces?), not one that is authenticated *after* he is discharged for refusal to accept the previously unauthenticated transfer-order. Appellant so contended at his Civil Service Commission hearing — see the first 17 lines of JA 221.

(D) Fraudulent

The "Secretary of Labor's certification" relied on by Government counsel (JA 64; Govt. Br. 13) is a fraud, perpetrated not only on appellant, but also on the Secretary. Assuming, *arguendo*, that the Secretary's signature is genuine, the document is a self-serving device prepared for the Secretary's signature by a *proved perjurer*. Its factual representations are lies. Citations to record-proof are incorporated into the following discussion (at pages 17-25, *infra*).

Government Point I(C) (Cont'd.)

Suppression of the Grievance Appeal-brief

The Question Is Subject to Judicial Review

Was appellant's grievance appeal-brief withheld from the Secretary of Labor? The Government would bar judicial consideration of

this question citing the *Morgan* case (Govt. Br. 13). The citation is inapposite. In the *Morgan* case, the Government successfully argued: "The Court below compelled the Secretary to testify . . . although the record was in all respects regular on its face." 313 U.S. at 410. But in the instant case, appellant did not seek the Secretary's testimony (in fact, appellant *objected* to the *Civil Service Commission's* seeking of it — page 3, *supra*), nor is the record in all respects regular on its face. More importantly, the Supreme Court said: "Our duty is at an end when we find, *as we do find*, that the Secretary was responsibly conscious of conditions . . . that he duly weighed them. . . ." (Emphasis added) 313 U.S. at 420. Appellant asks this Court (on the basis of the material immediately below) to make similar — but negative — findings: that the Secretary (or his delegate) was *not* "conscious" of appellant's grievance appeal-brief, and that the Secretary did *not* "duly weigh" the brief, because the brief had been withheld from him.

*The Civil Service Commission (The Board)
Made No Relevant Findings*

In their brief, Government counsel implicitly contend: (1) appellant's grievance appeal-brief was in fact forwarded by the Department of Labor's Office of Personnel Administration to the Secretary; (2) thereafter, the recommended grievance-decision was in fact adopted by the Secretary, as evidenced by the endorsed "A.J.G."; (3) in turn, the document Labor later introduced into the Civil Service Commission record, at the Commission's request to authenticate the signed "A.J.G.," was itself a valid document. As has been demonstrated (pp. 14-15, *supra*), the foregoing contentions (2) and (3) are not findings of the Civil Service Commission, but *post hoc* "findings" of Government appellate counsel. Contention (1) is the same.

The Government Relies Entirely on a Proved Perjurer

As will be shown, to ground all three *post hoc* contentions cited in the preceding paragraph, there is in the record *only* the unsupported

self-serving testimony of, and/or evidence prepared and submitted by, a proved perjurer. But to disprove these same *post hoc* "findings" by Government counsel, there is in the record — besides the Board's (Civil Service Comm.) discreet silence, and besides the Civil Service Commission's scheme to withhold appellant's grievance appeal-brief from the record submitted to the District Court (pp. 22-23, *infra*) — abundant evidence, including Department of Labor officials' persistent refusals to corroborate the evidence and testimony of the proved perjurer.

The proved perjurer is Mr. Harold E. Finnegan. Mr. Finnegan, an official of Labor's Office of Personnel Administration, was present during appellant's intra-Labor grievance hearing (penultimate paragraph of JA 132). There is in the Joint Appendix enough of the record (The great bulk of record-evidence pertinent here is not in the Joint Appendix.) to demonstrate that Mr. Finnegan, representing the Department of Labor's Office of Personnel Administration, thereafter guided and supervised the processing of appellant's intra-Labor grievance and subsequent removal: e.g., note — JA 8 — the initials at the bottom of the quoted memorandum, indicating that Mr. H. E. Finnegan authored the memorandum for Mr. McVeigh's signature; in routing a copy of its Finding to the Director of Personnel, the Grievance Committee directed it specifically to Mr. Finnegan (Footnote, Govt. Br. S.A. A5); note — JA 37 — at lower left, that Mr. Finnegan authored this memorandum for Director of Personnel McVeigh's signature;⁹ appellant's correspondence to Mr. McVeigh, Director of Personnel — JA 39 — was routed by that office to Mr. Finnegan (see upper right of memorandum), and see — JA 40 — an instance where, when Mr. McVeigh (rather than Mr. Finnegan) authored his own memorandum, a copy was furnished Mr. Finnegan to

⁹ A compelling conclusion is that, with few exceptions, Mr. Finnegan authored *all* pertinent correspondence signed by Director of Personnel McVeigh. The initials of the actual author appear only on retained office copies. But almost all of Mr. McVeigh's correspondence to appellant was introduced into the Civil Service Commission record by appellant, from the original documents.

keep his record complete; it is Mr. Finnegan — at JA 47 — who furnished Labor's record of appellant's removal to the Civil Service Commission; and lastly — at JA 174 — at appellant's Civil Service Commission hearing on his removal appeal, Labor was represented by Mr. Finnegan.

It was at this Civil Service Commission hearing, where Mr. Finnegan was under oath (JA 174), that he committed perjury at least once:

MR. FINNEGAN: The employment of Mr. Albamonte was completely legal. . . . That was the extent of the irregularity. (JA 206)

The two sentences just quoted are demonstrably perjurous: See JA 207-208; the witness speaking therein is appellant. In an excerpt from appellant's earlier intra-Labor grievance appeal-brief to the Secretary of Labor, more detailed data about the subject-matter of the perjury are found. (Lower half of JA 132 through JA 135)

*Appellant's Grievance Appeal-brief Discredits
Messrs. Finnegan and McVeigh*

Appellant's intra-Labor grievance appeal-brief discredits, or purports to discredit, Director of Personnel McVeigh and Mr. Finnegan. For example:

(a) Lower half JA 132-135: Mr. Finnegan knew that he had violated appellant's rights and failed in his own duties when he refused to answer a question put to him at appellant's grievance-hearing (JA 134-135). He did not repeat this specific dereliction. At a later grievance hearing of *another* employee, the same question was put to Mr. Finnegan. He answered it. Relying heavily on Mr. Finnegan's answer, the Grievance Committee in the latter case found *for* that employee (Item No. 8, JA 65).

(b) A memo dated November 7, 1961, to appellant from Director of Personnel McVeigh, is labelled *Exhibit B* of appellant's grievance

brief to the Secretary (JA 137-139). That grievance brief devotes 14 pages to an analysis of said *Exhibit B*. (The Index of the grievance brief indicates that *Exhibit B* is discussed on pages 5-18; JA 131.) In concluding said 14 page analysis, the appeal brief says:

Exhibit B — Summary: The first and second half of the third paragraph of *Exhibit B* each reveals a fatal violation of the Department's rules. On the whole, *Exhibit B* appears to evidence a distressing lack of sincerity and/or a lack of awareness of the significance of the information contained therein. (JA 132)

Messrs. Finnegan and McVeigh's Purported Forwarding of Grievance Brief to the Secretary: Corroboration Is Refused

It was to this same Director of Personnel McVeigh and his subordinate Mr. Finnegan, discredited by appellant's appeal brief, that, on December 13, 1961 (Compl. Par. 12, JA 7, 21), appellant necessarily entrusted said brief for forwarding to the Secretary of Labor (Compl. Par. 31-5(b), JA 14, 22). A month and a half later, in advising the Secretary of appellant's appeal, Messrs. McVeigh and Finnegan implied that, as they interpreted Departmental rules, appellant was permitted only a bare request for Secretarial review of the grievance record (Compl. Par. 13, JA 7-8, 21). That Messrs. McVeigh and Finnegan so interpreted Departmental rules is demonstrably untrue. (Items 2 and 3, JA 137; last paragraph, JA 140) In their same advice to the Secretary (Compl. Par. 13, JA 7-8, 21 *supra*), Messrs. McVeigh and Finnegan implied that such a bare request, unaccompanied by a brief, had in fact been submitted by appellant. This implication also, of course, is false. And lastly, in their same advice to the Secretary, Messrs. McVeigh and Finnegan recommended to the Secretary that he sign their enclosed prepared memorandum in which, to analyze the grievance record and make recommendations to the Secretary for its disposition,

they had designated Mr. David S. North (Compl. Par. 13, JA 7-8, 21 *supra*).

The subsequent alleged Secretarial decision of his grievance failing to answer, or even acknowledge, his appeal-brief, appellant asked Director of Personnel McVeigh if his office had forwarded the brief to the Secretary. (Item 3, JA 52) Director of Personnel McVeigh's answer was "Yes." (JA 66)

Appellant then wrote to the Secretary; appellant suggested (top JA 146) that no-one in the Secretary's office had seen appellant's brief, that (last par. JA 147) the Office of Personnel Administration (McVeigh-Finnegan) had in fact failed to forward the brief to the Secretary, and appellant suggested their motive. Appellant added: "Out of respect for himself and for the Civil Service Merit System, [appellant] has refused to accept his change in post of duty." (Last par., JA 147) The Secretary's Executive Assistant Shulman answered, promising, presently, to "go into [appellant's] memorandum in detail with the Secretary." (JA 149) In response, appellant advised Mr. Shulman of reasons for informing the Secretary without delay (JA 150). Appellant never heard from Mr. Shulman again — appellant so advised the Civil Service Commission's Board of Appeals and Review (top JA 111). Did Mr. Shulman ever "go into [appellant's] memorandum in detail with the Secretary"? The record has no answer. While waiting for Mr. Shulman's answer (which never came), appellant was discharged.

Similarly, before his discharge, appellant made persistent efforts to get corroboration from Mr. North (whose designation to study the grievance record had been recommended to the Secretary by Messrs. McVeigh-Finnegan — Compl. Par. 13, *supra* — and whose memorandum of recommendations to the Secretary, although based on Mr. North's study of the grievance record, had failed to acknowledge appellant's appeal-brief, and whose memorandum of recommendations had then become the Secretary's decision when "A.J.G." had been endorsed on it) that

appellant's grievance appeal-brief had in fact been included with the grievance record forwarded to him by the Office of Personnel Administration, personified by Messrs. McVeigh-Finnegan. But Mr. Northreferred all requests for corroboration to the selfsame Messrs. McVeigh-Finnegan. (JA 53-58)

*Appellant's Grievance Appeal-brief: Labor Withheld
It From the Civil Service Commission; the Commis-
sion Withheld It From the District Court*

At appellant's Civil Service Commission hearing, Mr. Finnegan demonstrated his familiarity with the contents of appellant's Secretarial grievance appeal-brief (top JA 200). This familiarity, no doubt, is the reason that, while admitting that Labor had it in its official records, and despite the requests, thinly disguised as suggestions, by the Civil Service Commission Appeals Examiner that he do so, Mr. Finnegan twice refused to submit that Secretarial appeal-brief in evidence before the Commission. At no little expense, the brief was later submitted to the Commission by appellant (JA 198-200).

Thereafter, in his District Court Complaint, appellant alleged that Labor's Office of Personnel Administration had fraudulently withheld from the Secretary of Labor that same grievance appeal-brief (top JA 14). Later, despite having promised the District Court to file the complete Civil Service Commission record (last sentence of first paragraph of "Statement," JA 25), the Government filed with the Court a record that failed to include said grievance appeal-brief. The Civil Service Commission *certified* to the Court that the appeal-brief "is missing."¹⁰ And still later, appellant having challenged the absence of the appeal-brief from the Commission's official records, the Govern-

¹⁰ For the Commission's notation that an item No. 8 "is missing": Item No. 41, JA 30.

For the identification of the "missing" No. 8 of enclosure 41 as the grievance appeal-brief: Bottom JA 65-top JA 66; top JA 67.

For the Commission's certification: JA 28.

ment belatedly filed it with the District Court (JA 130-131). Note that the District Court is not told *why* the brief was certified as "missing," nor why it is missing no longer. But the Court *is* in effect advised that Government counsel knew nothing of the matter, that the blame lies with the Civil Service Commission (JA 131).

Analysis of Record Proof:

- (a) *The Grievance Appeal-brief Was Fraudulently Withheld From the Secretary of Labor.*
- (b) *The Memorandum "Authenticating" the Secretary's Grievance Decision Is Fraudulent.*

See Items No. 9, 8, of App. Br. 55.

Analysis of the record reveals that each major step in the processing of appellant's intra-Labor grievance appeal to the Secretary — the transmission of appellant's grievance appeal-brief to the Secretary of Labor (JA 8), the designation by the Secretary of Mr. North to review the grievance record and make recommendations for a Secretarial decision (JA 8), the transmission of the Secretary's subsequent decision ("A.J.G.") to appellant (JA 141-145), and the Secretary's subsequent authentication of "A.J.G.," addressed to Labor's Mr. North and ultimately submitted to the Civil Service Commission (JA 62-64) — all were controlled by Labor's Office of Personnel Administration, personified by the perjurous (page 19, *supra*) Mr. Harold E. Finnegan.

But when appellant sought from other Labor officials corroboration that the Office of Personnel Administration (Mr. Finnegan) had acted properly, in *no* instance was it forthcoming. Neither Mr. Shulman nor Mr. North would corroborate that the Secretary's office had received appellant's appeal-brief from the Office of Personnel Administration (pp. 21-22, *supra*). As for the Secretary's grievance decision: The Secretary's authentication of "A.J.G." — which took the form of a memorandum addressed by the Secretary to Labor's Mr. North (JA 63, 64) — had been requested by the Civil Service Commission from the

perjurious Mr. Finnegan (JA 220-221); a copy was submitted to the Civil Service Commission by Mr. McVeigh (Mr. Finnegan) (JA 62); it was purportedly secured from the addressee, Mr. North, by Mr. Finnegan (JA 82-83); Mr. Finnegan had indeed testified under oath that he had been trying to get authentication of "A.J.G." (top JA 220). But the addressee, Mr. North (just as he had earlier refused to confirm that he had received appellant's grievance appeal-brief from Messrs. McVeigh-Finnegan — see the second sentence of the instant paragraph), now refused to confirm that he had ever received the original of the authenticating memorandum from the Secretary, let alone that he had given it to Mr. Finnegan (JA 72, 75, 77-78, 79-80, 83-85). Mr. North referred all inquiries to — naturally — Mr. McVeigh (Finnegan). (*ibid.*) But the original of the memorandum authenticating "A.J.G." *was* in Mr. Finnegan's possession (JA 74-75, 76). And, as we shall now see, it was undoubtedly he that fabricated it in the first place.

Since it had been prepared for further dissemination to interested parties, in the "trust" that it "clarifies the situation" (JA 63), why would the Secretary have addressed the authentication of "A.J.G." to Mr. North? Mr. North was uncommunicative and "answerable only to the Secretary." (JA 56, 53-55) In Civil Service Commission hearings such as that afforded appellant, "Statements of witnesses shall be by affidavit, when practicable. . . ." (CFR, 1949 Ed., Sec. 22.401(b)) Assuming, *arguendo*, that the original of the Secretary of Labor's authenticating memorandum to Mr. North (JA 63, 64) bears, rather than a stamped signature, the genuine written signature of the Secretary: There can be no doubt that the memorandum was prepared for the Secretary's signature by the perjurious Mr. Finnegan;¹¹ that it was written expressly to answer the questions put to Mr. Finnegan by the Civil Service Commission Hearing Examiner (top JA 220 — middle JA 221); and that it was

¹¹ Messrs. McVeigh-Finnegan prepared documents for the Secretary's signature — see Compl. Par. 13, JA 8, and see lines 17-19 and Footnote 9 of page 18, *supra*.

addressed not to the Commission's Hearing-examiner but to the Department of Labor's Mr. North only to camouflage written testimony as a fortuitously written document — thus circumventing the affidavit requirement. The Secretary would of course personally verify the contents of an affidavit presented to him for signature; but he obviously did not recognize the memorandum in question as camouflaged testimony — he accepted it as a routine personnel matter and signed it not upon confirmation of its contents, but upon reliance on the good faith of the Office of Personnel Administration (Mr. Finnegan) which presented it to him for signature. The contents of the document are false, of course — that is why the Secretary's signature was obtained by deceit.

Indeed, if the contents of the document are factual (JA 63), when the Secretary's Executive Assistant Shulman failed to answer appellant's memorandum (page 21 *supra*) — a memorandum in which appellant had indicated his doubt as to the authenticity of the signed "A.J.G." adopting the grievance decision, and in which appellant had indicated that for this reason, among others, he had "refused to accept his change in post of duty" (JA 147) — Mr. Shulman *knew* that "A.J.G." was authentic, knew, in fact, that *he himself* had written those approving initials at the Secretary's request and in the Secretary's presence. Instead of dissolving appellant's doubt about "A.J.G.," and thus perhaps enabling appellant to accept his transfer and avoid discharge, Mr. Shulman, incredibly, chose to remain silent. Appellant's doubt persisted, he failed to report to Detroit, he was discharged.

In summary: The Board of Appeals and Review (Civil Service Comm.) failed to make findings as to whether the authority for appellant's transfer was forged, or as to whether appellant's grievance appeal-brief had been fraudulently withheld from the Secretary. As for Government counsel's *post hoc* adjudication of these matters: "The Secretary of Labor's certification," which is purportedly "wholly dispositive" of appellant's forgery claim (Govt. Br. 13), is itself a fraud.

And contrary to Government counsel's contention (Govt. Br. 13), the record proves that the grievance appeal-brief was fraudulently withheld from the Secretary of Labor.

CONCLUSION

Appellant's Conclusion — as stated at pages 59-60 of his Brief, and as amended at pp. 2-3, *supra*, is valid.

Respectfully submitted,

WILFRED HANDLER

P. O. Box 1052
Baltimore, Maryland 21203

Appellant, pro se

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 20,219

WILFRED HANDLER,
Appellant,

v.

SECRETARY OF LABOR, *et al.*,
Appellees.

APPELLANT'S PETITION FOR REHEARING

United States Court of Appeals
for the District of Columbia Circuit

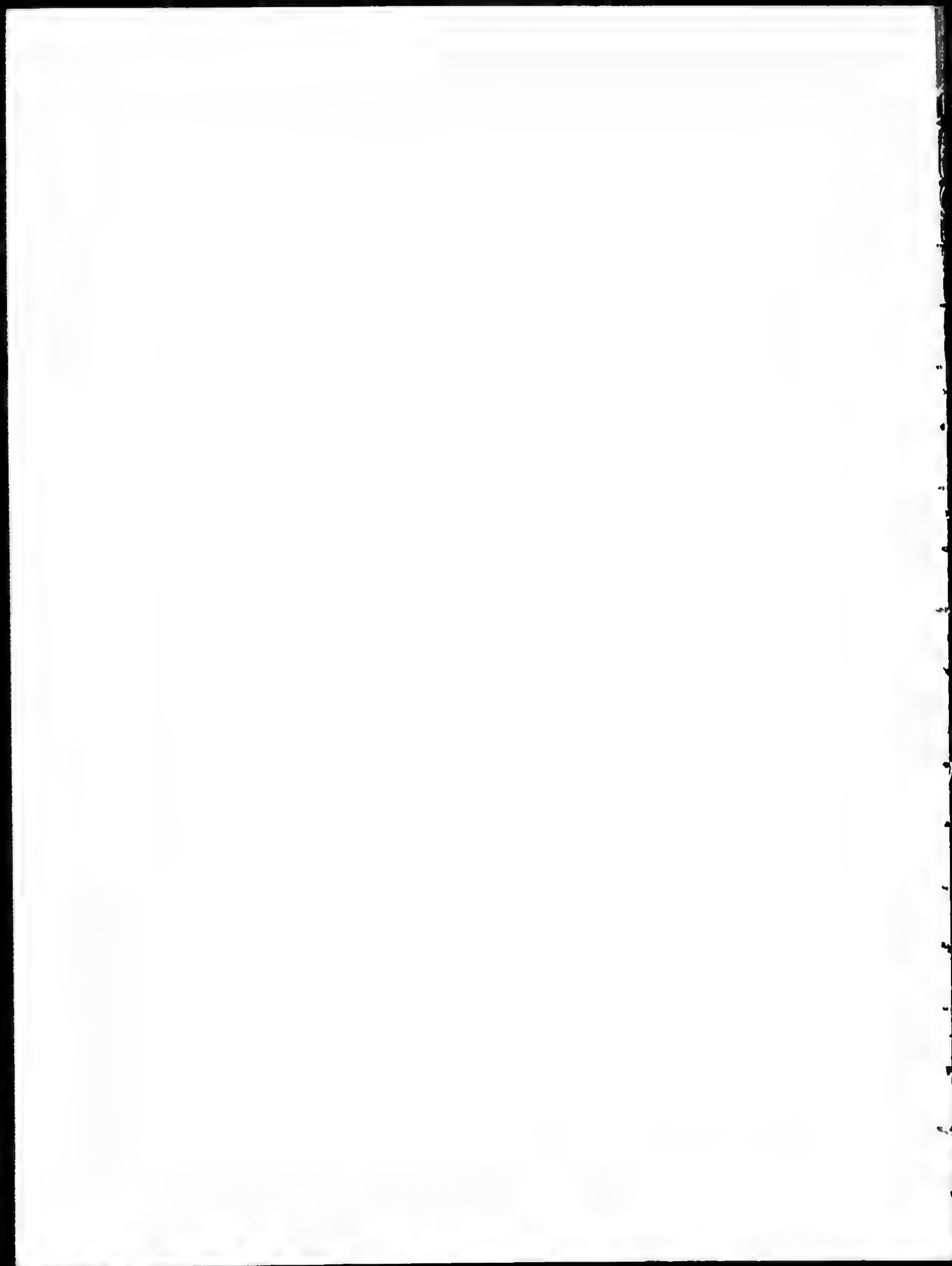
FILED APR 21 1967

Nathaniel J. Paulson
CLERK

WILFRED HANDLER

P. O. Box 1052
Baltimore, Maryland 21203

Appellant, pro se



United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 20,219

WILFRED HANDLER,
Appellant,

v.

SECRETARY OF LABOR, *et al.*,
Appellees.

APPELLANT'S PETITION FOR REHEARING

PRELIMINARY STATEMENT

Appellant respectfully petitions this Court for a rehearing. The grounds for said petition are outlined immediately below, following which they are detailed.

PETITION'S GROUNDS IN OUTLINE

Apparently relying *only* on the good faith of the appellees (the Government) and the brief submitted in their behalf, completely ignoring appellant's meticulously documented briefs, in its decision, as is demonstrated *infra* by reference to the briefs in the case, the Court of Appeals unwittingly commits the following outrages:

A. Implicitly tells appellant that regarding his efforts to gain Federal reemployment, he must either forfeit his prescribed *preferred* status, indeed forfeit *any* real opportunity to ever again work for the Federal Government in resumption of his 20 year Federal career, or else repeatedly execute false certificates, each "punishable by fine or imprisonment."

Page 3 *infra*

B. Overrules established law, and sets a precedent for new law that, in the words of a former judge of this Court, will be "a greater menace to our institutions than the threat of the atomic bomb." ¹

Page 5 *infra*

C. Adopts and asserts as a factual basis for its decision a contention from the Government's brief that is completely without basis, and is in fact a vicious lie.

Page 8 *infra*

D. While purportedly "cutting directly to the heart of this appellant's contentions," in fact totally ignores *all* of them. None of appellant's eleven points on appeal is answered, not one is even acknowledged. Thus in substance, but not in form, appellant has been denied his day in this Court.

Page 8 *infra*

E. Affirms a decision in favor of the Government even though the Government's brief is *demonstrably* totally devoid of merit, and, borrowing past words from one of the judges who authored the decision of the Court of Appeals, warrants only "contempt" not only upon "moral and ethical grounds," but also because of its "stupidity" and "unbelievable arrogance" in assuming that "appellate judges" may be "tricked" by "inaccurate phrasings of such features as the questions presented

¹ *Reynolds v. Lovett*, 91 App. D.C. 276, 277, 201 F.2d 181, 182 (1952). Cited at Appellant's Br. 57.

and the facts" ² and by outright misstatements of fact. Appellant's *demonstration* of the contemptible total worthlessness of the Government's brief is documented *infra*.

Page 9 *infra*

PETITION'S GROUNDS IN DETAIL

A. The Court Implicitly Tells Appellant To Repeatedly Execute False Certificates

The natural consequence of the Court's decision is that appellant must forfeit his prescribed *preferred* status as to Federal reemployment, in fact must forfeit *any* real opportunity to ever again work for the Government, or else repeatedly, in writing, lie. It also happens, and it is also an expected consequence of the decision, that the lies must be in certificate form.

The Government admits that the specific separation action effected against appellant was — and that despite the ineffective "corrected 'Notification'" issued 6 weeks later, after appellant's Civil Service Commission hearing, it remains — a removal. The Government's Brief cites, but like the Civil Service Commission it urges no significance for, the "corrected 'Notification.'" (Reply Br. 3-6) Indeed, the Civil Service Commission found the "corrected 'Notification'" of no effect and "inconsequential" (Reply Br. 5-6), and since it conflicts with the facts (incorrectly, it reports the specific separation action as one *other* than removal), according to the Federal Personnel Manual the Notification may yet again be changed to correctly re-identify the action effected as a removal. (Item (a), Reply Br. 4) Moreover, the excessively severe (*infra*) removal action was effected knowingly, deliberately, and over appellant's protests. See Item III, Appellant's Br. 15 et seq.

² Prettyman, *Observations Concerning Appellate Advocacy*, 39 Virginia Law Review 298, April 1953.

The removal action effected against appellant is a punitive one (see next paragraph), a more severe discharge action than the one that had been proposed, more severe than the one prescribed. The specific discharge action proposed and prescribed are one and the same — it is non-punitive, and if effected would have entitled appellant to *preferred* reemployment status — Item (b), Appellant's Br. 39-41; Item 3, Appellant's Br. 47-48. Upon his separation, had appellant applied for that preferred status, he would have been required, under "penalty of fine or imprisonment," to certify as to the "Reason for leaving" said job. Similarly, and under threat of the same penalties, appellant must make that same certification now³ and henceforth in seeking Federal employment.

But as explained two paragraphs above, the *actual* reason for appellant's leaving his job with the Department of Labor, succinctly, correctly, and precisely stated, is "removal" — a reason that automatically eliminates appellant from any consideration for reemployment. See Item (d), Appellant's Br. 36; see Item B(a), Appellant's Br. 38-39. And see appellant's unchallenged sworn testimony that a Civil Service Commission official had told him he would be "wasting [his] time" applying for Federal employment if he had in fact been removed — pp. 32-33 of Gov't. Exhibit B at JA 179, cited at Appellant's Br. 35, last line.

Queries: 1. On each Civil Service Commission Form 57 appellant now submits in seeking Federal employment, should he eliminate himself from employment consideration, and render the Form 57 worthless, by factually certifying that his job with the Department of Labor ended with removal? Or, on each Form 57, should he adopt the lie reflected on the ineffective "corrected 'Notification' " and execute a false certificate? And even so, what of the 6 weeks immediately following his removal, *before* the issuance of the "corrected 'Notification' "?

³ U.S. Civil Service Commission Standard Form 57, Application for Federal Employment.

And what if the Notification is changed again, as the Federal Personnel Manual permits, to correctly reflect the *removal* action in fact effected?

2. The Court of Appeals' decision reads: "Since there was a rational basis for the appellant's separation from service . . ." Query: As distinguished from other types of separation, was there a rational basis for appellant's *removal*? See JA 107, last paragraph, through 8 lines from the bottom of JA 108, cited at Reply Br. 8; and see Reply Br. 8-9.

B. The Court's Decision Overrules Established Rules of Law and Sets a Precedent for Unbelievably Outrageous and Dangerous New Ones

1. The Government's pleadings in the District Court, in conjunction with the Government's Brief in this Court, *concede* the validity of appellant's Argument-Points I through V (see Reply Brief 3, the last paragraph beginning thereon). Therefore, this Court's decision may hereafter be cited in support of the following incredible rules of law (Unlike Nos. 2 and 3 of the instant part B, the instant part No. 1 does not identify the specific circumstances, because the defects cited in the instant part No. 1 are additional defects all stemming from the effecting of the excessively severe *removal* action, already discussed *supra*.):

A discharge from Federal employment is valid even though:

(a) The discharging agency deliberately violates material procedural requirements of the Veterans' Preference Act as expressly prescribed by the Federal Personnel Manual. Appellant's Argument-Points I, II, Appellant's Br. 32 ff.

(b) The discharging agency deliberately violates basic and fundamental provisions of the Veterans' Preference Act itself. Appellant's Argument-Points III, IV, Appellant's Br. 42 ff.

(c) The discharging agency exceeds its legal discretionary authority by deliberately violating still other material provisions of the Federal Personnel Manual (other than those cited in item (a) above) that are unrelated to the Veterans' Preference Act. Appellant's Argument-Point V, Appellant's Br. 46 ff.

2. Since appellant's Argument-Points VI and VII had been documented and made earlier to the Civil Service Commission, and since the Commission failed to rule on (or even acknowledge) them, the Commission's decision in effect assumed the validity of the factual bases for those arguments, but disagreed with the ultimate legal conclusion — that appellant's removal is void — to be drawn from them. Appellant's Br. 49 ff., 52 ff; Reply Br. 12-26. The Court has in effect adopted the Commission's views.⁴ The Court's decision may therefore be cited in support of the following incredible rules of law:

(a) Where an employee's change in duty station is unauthorized and illegal — i.e., the specific authorization cited by the agency is a forgery — and where the employee's appeal-brief, submitted to the agency's Secretary in accord with agency regulations, had been fraudulently suppressed from the Secretary, and where the employee refuses to honor said transfer because he recognizes⁵ and is unwilling to become a party to the cited forgery and fraudulent suppression, and where the perpetrators of said forgery and suppression thereupon and for that reason discharge the employee, said discharge will be sustained by the Courts, being a discharge "for such cause as will promote the efficiency of the

⁴ "... the standard of judicial review is that of whether there is evidence of substance in [the Civil Service Commission record] which supports the Commission's view of the matter." *Dabney v. Freeman*, 123 U.S. App. D.C., 166, 168, 358 F.2d 533, 535 (1965).

⁵ Admittedly, on its face, the transfer's authorization was invalid. Reply Br. 16, Item (C) thereon. Compliance with such a transfer order would not be required even under military discipline.

service ..." Veterans' Preference Act of 1944, 5 U.S.C. 863. See appellant's Argument-Point VII, Appellant's Br. 52 ff.; Reply Br. 12-26.

(b) That a Civil Service Commission Appeals Examiner finds a stipulation of fact made by the discharging agency incredible (JA 178, lines 18-24), thus indicating that he recognizes the validity of the discharged employee's contention that he had received only 3 days, rather than the prescribed 10, to answer the charges preferred against him, and said Appeals Examiner thereafter requires a ten minute recess to recover from the shock (JA 178, lines 18-27), is no assurance that it will shock the conscience of the Court. See Point VI of Appellant's Argument, Appellant's Br. 49. And see appellant's unchallenged sworn testimony about the inhibition of the answer he was privileged by law to make: "I was actually waiting before making my answer to find out what was meant in the letter of charges when it said the Secretary had approved my transfer." JA 212, 1st paragraph, cited at Appellant's Br. 25, 50.

3. Since the pertinent facts are uncontested, the Court's decision in the instant case may be hereafter cited in support of the following incredible rules of law:

(a) Where, in considering a discharged employee's appeal, the Civil Service Commission either fails entirely to consider documentary evidence submitted to it by said employee because the evidence later became "missing," or "considers" the evidence only in bad faith, as evidenced by the Commission's subsequent attempt to withhold said evidence from the District Court by *falsely certifying* to the Court that the evidence is "missing," the Commission's adjudication of the employee's appeal is nevertheless valid and will be upheld by the Courts. See Point VIII, Appellant's Br. 56; Reply Br., last paragraph beginning on page 22.

(b) Where the *U. S. Attorney's Office* unwittingly collaborates with appellant to *demonstrate to the Court* that the Civil Service Commission's decision is fraudulent, the Commission's adjudication of the employee's appeal will nevertheless be sustained by the Courts. See Reply Brief, 8-9.

(c) Although said rules exempt no-one, the requirements of Rule 33 (Federal Rules of Civil Procedure) that objections to interrogatories be filed within 10 days, and of Rule 30(b) that a motion for a protective order be "seasonably made," will be applied to all litigants *except* Government officials accused of error and fraud. See Appellant's Br. 56; Reply Br. 6-7.

C. As a Factual Basis for Its Decision, the Court Adopts and Asserts a Vicious Lie

This Court gives as a basis for its decision: ". . . despite the appellant's insistence, it is not open to us to subject the Secretary to examination in respect of the decision he had reached." Appellant's "insistence" on examining the Secretary is a vicious lie originating in the Government's Brief, unwittingly adopted by the Court. See Reply Brief 3. Moreover, appellant has *never* questioned the good faith of the decentralization in years 1960-1961 (Item 4, JA 6), has *never* denied that as of May 6, 1962, more than a year after said decentralization, he was directed to report for duty in Detroit (Item 17, JA 9), has *never* denied the Department of Labor's right to change its employees' posts of duty, has *never* attempted to subject the Secretary to examination in respect of *any* decision. Reply Br. 3, *supra*.

In this connection, the Court's citation (adopted from the Government's Brief) of a Supreme Court decision is completely unjustified. See Reply Br. 17.

D. Appellant Has Been Denied His Day in This Court

The instant petition, in its entirety, demonstrates that rather than "cutting directly to the heart of this appellant's contentions" as it explicitly professes, the Court's decision totally ignores *all* of them, in fact ignores appellant's appeal. None of appellant's points on appeal is even acknowledged. See, e.g., Items A 1, 2, pages 4-5 *supra*; Items B 1, 2, 3, pages 5-8 *supra*.

E. Appellant Has Demonstrated the Complete Worthlessness of the Government's Brief

The contemptible worthlessness of each and every part of the Government's Argument has been *demonstrated* as follows:

Gov't. Point I See Reply Br. 3

Gov't. Point I (A), (B) See Reply Br. 3-6

Gov't. Point I (C): Forgery See Reply Br. 12-16
 Suppression
 of brief. See Reply Br. 16-25

Gov't. Point II. See Reply Br. 6-7

CONCLUSION

It is respectfully submitted that, at the very least, the Court should either truly reach appellant's contentions, or else eliminate from its decision the specific assertion that it does so. But in either event, it is respectfully submitted that for appellant to know the position in which the Court leaves him, the Court *must* answer the queries in Items A 1, 2 (pages 4-5 *supra*). And the vicious lie that the Court adopts from the Government's brief should be deleted from its decision, as should the related unjustified citation to a Supreme Court decision (Item C, page 8 *supra*). Also, so that appellant may know that they apply not only to him, but to all subsequent litigants, the Court's decision should enunciate clearly the incredible, outrageous, dangerous, new rules of law for which it becomes authority. Item B-1, 2, 3, pages 5-8 *supra*.

Preferably, of course, the monstrous injustice effected by finding against appellant should be reversed. It makes of the Veterans' Pref-

erence Act a hollow mockery. Today, American servicemen are risking their lives, some losing them. Tomorrow, those lucky enough to survive may need to assert in Court the veterans' rights given them by a grateful Congress. What does this Court now tell them to expect?

Respectfully submitted,

WILFRED HANDLER
P.O. Box 1052
Baltimore, Maryland
Appellant, *pro se*

AFFIDAVIT OF GOOD FAITH

I hereby affirm that the foregoing Appellant's Petition for Rehearing is presented in good faith and not for delay.

WILFRED HANDLER
Appellant, *pro se*

Subscribed and sworn to before me this ____ day of April, 1967

NOTARY PUBLIC

AFFIDAVIT OF SERVICE

I hereby affirm that I have personally served on appellees' attorney, U.S. Attorney, Washington, D.C., two copies of the foregoing Appellant's Petition for Rehearing on this ____ day of April, 1967.

WILFRED HANDLER
Appellant, *pro se*

Subscribed and sworn to before me this ____ day of April, 1967.

NOTARY PUBLIC
